161 US 72

TRANSCRIPT OF RECORD.

161-42

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 471.

THOMAS BALL, PLAINTIFF IN ERROR,

vs.

JULIA F. HALSELL, EXECUTRIX OF J. G. HALSELL,
DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF TEXAS.

FILED OCTOBER 24, 1894.

(15,713.)

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INDEX.

	Original.	Print.
Caption	1	1
Plaintiff's original petition	2	1
Defendant's original answer	5	3
First supplemental petition of plaintiff	10	7
Judgment	12	9
Plaintiff's motion for new trial	12	9
Order overruling motion for new trial	13	10
Findings of fact and law	14	16
Assignment of errors	16	12
Bond on writ of error	17	13
Petition for writ of error and allowance	19	14
Writ of error	20	15
Citation and service thereof	22	15
Clerk's certificate	24	16

June, 1892, at six

1—471

[illegible] Washington, D. C., October 5, 1895.

1 *Caption.*

Be it remembered that at a term of the circuit court of the United States, in the fifth circuit thereof, and in and for the northern district of Texas, at Dallas, begun and holden at Dallas, Texas, on the 8th day of January, A. D. 1894, and which term adjourned on the 9th day of March, A. D. 1894, the Hon. John B. Rector, United States district judge for the northern district of Texas, presiding, the following proceedings were had and the following cause came on for trial and was tried, to wit:

THOMAS BALL
vs. No. 1686.
JULIA F. HALSELL, Executrix.

2 THOMAS BALL
vs. No. 1686.
JULIA F. HALSELL, Executrix.

Original Petition. Filed Aug. 18, 1893.

In the Circuit Court of the United States for the Northern District of Texas, at Dallas.

THOMAS BALL, Plaintiff,
vs.
JULIA F. HALSELL, Executrix, Defendant.

To the honorable court:

Thomas Ball, who is a citizen of the State of Virginia, residing in the county of Northumberland, in said State, complaining of Julia F. Halsell (a widow), a citizen of the State of Texas, and residing in the county of Wise, in said State, and in the northern district of Texas, respectfully shows to the court:

1. That the defendant Julia F. Halsell is the surviving widow and legatee of one J. G. Halsell, hereinafter referred to, who departed this life in said Wise county on the — day of ——, 1886, leaving a large and valuable estate, consisting of real and personal property, in the State of Texas, and of the value of about two hundred thousand dollars, all of which went into the possession and control of the defendant as independent executrix of the last will and testament of said deceased J. G. Halsell, the said decedent having died testate, and by the terms of his last will and testament the defendant was appointed independent executrix of said will, without bond, and according to the terms of the will no action was had in the probate court of Wise county except to probate the will and
3 return an inventory and appraisement as required by law. Said will was duly probated in said court on July 21st, 1886.

2. That the defendant, as executrix, is justly indebted to plaintiff in the sum of $7,360, besides interest thereon from the 16th day of June, 1892, at six per centum per annum, for that heretofore, to wit:

on or about the 22nd day of May, 1874, the said J. G. Halsell, in his lifetime, entered into a written contract with the plaintiff, in words and figures, substantially as follows, to wit:

"STATE OF TEXAS, } *To wit:*
County of Jack, }

We, the undersigned parties of the first part, do hereby constitute and appoint Thomas Ball our lawful attorney*s* to receive and to make, sign and give all necessary acquittances and receipts for one-half of all money which may be received by him as our attorney-at-law, for prosecuting claims against the United States Government, on account of the depredations of the Comanche and Kiowa Indians, on our property of horses, mules, and cattle, in the State of Texas. Said one-half being the amount agreed by us to pay him of all that he may recover of said Government for said depredations.

Given under our hands this 22nd day of May, A. D. 1874.

J. G. HALSELL."

STATE OF TEXAS, }
County of Jack. }

Before me, Ed. Wofforth, clerk of the district court of Jack county, this day personally appeared J. G. Halsell, to me well known, whose signature appears to the foregoing instrument of writing, and acknowledged that he signed and delivered the same as his voluntary deed for the purposes and consideration therein contained and expressed.

Witness my hand and official seal of office in said county this the 22nd day of May, A. D. 1874.

[SEAL.] ED. WOFFORTH,
C. D. C., J. C., T.,
Per BALL, *Deputy.*"

3. That pursuant to said contract, and for the purpose of carrying out the provisions of the same according to the tenor and effect
thereof, the plaintiff did, on or about the 15th day of March,
4 1875, make out and present to the United States of America,
through its regularly appointed, qualified and acting Commissioner of Indian Affairs, at Washington city, District of Columbia, a claim in favor of said J. G. Halsell for depredations to his property in the State of Texas by the Comanche and Kiowa Indians, said claim amounting in the aggregate to the sum of $24,860.00; that the plaintiff, at a great cost and outlay of money to himself, employed counsel at Washington city to assist him in and about the prosecution of said claim against the Government, and plaintiff did, by himself, and through his said assistant counsel, labor assiduously, energetically, and unceasingly before the departments of the Government at Washington, committees appointed by the Congress of the United States, for the purpose of investigating and reporting upon said claim, and before the Court of Claims of the Government, and did finally succeed in recovering a judgment on said claim in the Court of Claims, on the 16th day of June, 1892, in

favor of the plaintiff, for the sum of $17,720, which sum of money was paid by the United States to the defendant as executrix of the said J. G. Halsell, less the sum of $1,500, which was by the court rendering the judgment allowed to plaintiff as a part of his fees for prosecuting said claim.

4. Plaintiff shows that upon the rendition of said judgment he was entitled to one-half thereof, to wit: the sum of $8,860, and plaintiff alleges that his services in and about the presentation and prosecution of said claim were of the reasonable value of $8,860, but the plaintiff shows that although the existence of said contract between the plaintiff and J. G. Halsell, and the rights of the parties thereunder, and the right of the plaintiff to one half of said judgment was well known to the defendant, and although the defendant promised to pay the plaintiff one-half thereof, to wit: the sum of $8,860, and although the plaintiff has often requested the defendant to pay the same to him, with interest, the defendant has wholly failed and refused, to the plaintiff's great damage.

5. Wherefore the plaintiff brings this suit and prays that the defendant, Julia F. Halsell, be cited to appear and answer this petition
and that upon final trial the plaintiff have judgment against
5 the defendant for his half of said judgment, less $1,500 allowed by the Court of Claims aforesaid, with interest thereon as hereinbefore stated, and execution against the property of said estate in the hands and control of said Julia F. Halsell as independent executrix, costs of suit and all general and special relief to which plaintiff may prove himself entitled in the premises.

CRAWFORD & CRAWFORD;
S. S. LONG, *Att'ys for Plaintiff.*

The foregoing has the following endorsement, to wit:

No. 1686. Thomas Ball *vs.* Julia F. Halsell, executrix. Original petition. Filed Aug. 18, 1893. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

Defendant's Original Answer. Filed Jan'y 8, 1894.

In the United States Circuit Court for the Northern District of Texas.

THOMAS BALL
vs.
JULIA F. HALSELL. } No. 1686.

Comes the defendant, by her attorneys, and says that plaintiff's petition is insufficient in law, and of this she prays the judgment of the court.

And for further answer, defendant denies all and singular the allegations in said petition contained, and of this she puts herself on the country.

And for further answer, defendant says that the contract described in plaintiff's petition, if any such was ever made, was declared void by the ninth section of the act of March 3rd, 1891, of the Congress of the United States, entitled, "An act to provide for the adjudication and payment of claims arising from Indian depredations," and by the authority and directions of the same section, an allowance, and all that said act permitted to be paid plaintiff under his said employment was made to plaintiff in the judgment rendered by said Court of Claims in favor of this defendant, and was paid to him out of the Treasury of the United States.

And for further answer, defendant charges, that on, to wit, the 4th day of April, in the year of our Lord one thousand, eight hundred and ninety-one, plaintiff wrote a letter to Soward & Martin, who
were then the agents and attorneys of this defendant, in
6 which he informed them that he had associated with himself
in the prosecution of said claim one J. Daniels, an attorney-at-law, of Washington city, D. C.

Defendant further charges that, said Daniels having been so associated with plaintiff in the prosecution and collection of said claim, on, to wit, the 25th day of March, 1891, he, the said Daniels, acting for himself and plaintiff, wrote and caused to be delivered to said Soward & Martin, who were then and there the agents and attorneys of defendant, as aforesaid, a letter requesting her to forward to them her power of attorney, authorizing plaintiff and said Daniel to conduct and prosecute a suit for the collection of said claim, and in said letter the said Daniel, for himself and as the agent of plaintiff, represented and undertook that the only compensation or fee that could be paid to said attorneys for the services of them, or either of them, was such an allowance as said Court of Claims should see proper to make them under said act of Congress, and that it was upon that assurance only that defendant permitted the plaintiff and his said associate counsel to continue the prosecution of said claim in her name.

Defendant herewith files a letter from plaintiff, dated the 4th day of the 3rd month of the year 1891, and one from said Daniels, dated the 25th day of March, 1891, as part of this answer.

The defendant charges that plaintiff and his associate, the said Daniels, wrote her other letters, in which they admitted that said act of Congress regulated the amount of their compensation for their said services, and that it had been allowed them in said judgment and paid to them.

Of all of which defendant puts herself upon the country and prays *to* that she be discharged, with her costs, etc.

LEAKE, HENRY & REEVES,
Att'ys for Defendant.

BEHOTOSH CHURCH, VA., 4, 3, '91.

Soward & Martin.

DEAR SIRS: Yours of the 25th ulto. in reply to mine to Mrs. H. was here yesterday on my arrival from Washington, and you may
rest assured it was an agreeable surprise to find that I had
7 to deal in this matter with my friend of former days, Judge
Soward. Mr. J. Daniels, 1505 Penna. Ave., Washington city,

D. C., is the att'y I have associated with me in all these claims for Indian depredations and all he has done in the case is under my instructions so there will be no "tangle" resulting to Mrs. H. by executing the P | A, I enclosed to her. When I wrote her it was from the office of Mr. Daniels in Washington. Soon as the bill passed the late Congress I went to Washington, and at once brought suit in all the claims (I represented) against the U. S. I have a P | O from J. G. H. but for fear of an accident in court I thought it better to have one from his adm'r. So send it and the orders of the probate court showing the appointment and qualification of the adm'r or adm'tr'x as the case may be. This has been a long struggle to obtain the law giving jurisdiction to a tribunal to dispose of these claims, and you will appreciate the necessity of having every paper which possibly may be required in the court-room in the fight with the U. S. for every advantage will be taken by the gov. and the court is not inclined to do more for the claimants than compelled; also write me the full Christian name of my late friend J. G. Halsell, and when the adm'r signs the P | A have the entire Christian name written; this is necessary under the law to render a proper judgment. I shall return to Washington in a day or two, but write me here and oblige.

Yours truly, THOS. BALL.

Send the papers at once and I may obtain judgment before the court adjourns in May. Say to Mrs. Halsell, nothing will be left undone to expedite her claim; when the judgment is obtained she can designate some one to receive her draft from the Gov. It is probable that I will have to come to Tex. the last of this month in connection with some of these claims, if so, will see Judge S. & Mrs. H.

Law office of J. Daniels, 1505 Pennsylvania avenue.

WASHINGTON, D. C., *March* 25, 1891.

Messrs. Soward & Martin, att'ys-at-law, Decatur, Texas.

GENTLEMEN: I am in receipt of your two communications
8 of the 20th inst., referring to the claim of J. G. Halsell, and
my authority to represent that case; I have to say that on the 22nd day of May, 1874, Mr. J. G. Halsell executed and delivered to Thomas Ball, of Jackboro, Texas, a power of attorney, coupled with an interest to prosecute his claim against the Government for indemnity for Indian depredations. Mr. Ball substituted me to prosecute the case here and got up the evidence and sent to me, and I prosecuted the case before the Indian Department, and obtained an allowance of nineteen thousand two hundred and fifty dollars. I then drew up a bill and had it introduced into Congress appropriating the money to pay this, and a large number of other claims of the same character sent to me by Mr. Ball and others. Had the cases all referred to proper committees, appeared and argued them before the committee and obtained favorable reports, but the cases were not reached for action, and this proceeding continued for sev-

eral Congresses, until in the 49th Congress, I got the cases amounting to about $60,000 put into the general appropriation bill, and it went through the House without serious opposition, but Mr. Dawes, chairman of the Committee on Indian Affairs in the Senate, had the provision stricken out on the ground that there were other claims equally meritorious, and that provision should be made for all or none.

He then introduced a resolution or amendment to the appropriation bill which finally culminated in the passage of the act, a copy of which I herewith enclose. Immediately after the passage of this act I proceeded to file in the Court of Claims under its provisions, all the claims in which I had obtained allowances, including the Halsell case and all of the other cases sent to me by Mr. Ball, amount-to about $80,000. Having no official knowledge of the death of Mr. Halsell, I, of course, could make no distinction and filed his case with the rest. You will see by this act that this money is to be paid out of any fund which the Indians may have in the hands of the Government, and therefore it became me to be first in if I wished to be first served, which under the circumstances is very desirable, as I suppose the claimants are all anxious to get their money as
soon as possible, and my experience has always taught me
9 that it pays to be diligent in matters of law as well as other
things. This is briefly, though not in detail, my connection
with the claim of Mr. Halsell. Mr. Ball now lives at Rehoboth Church, Northumberland Co., Virginia, comes up here when necessary in the prosecution of these cases; he has been here for the past few days and left for his home a few miles down the river the day before yesterday.

While here he wrote to Mrs. Halsell in regard to this claim, telling her what further was necessary on her part. If she sends to him the power of attorney required, the petition can be amended to conform to the change in the name of the parties occasioned by the death of the claimant, and the case retain its place on the calendar, which is important, as many cases have been filed since, and unless it preserves its place it will be far behind on the calendar, and will have to wait all that precede it.

You will observe by a perusal of this act that the fees of the attorney are fixed by the court, and are paid direct to the attorney by the Government. The contract for fees in all except one of Mr. Ball's cases, was fifty per cent. on the amount recovered, but the act settles this, and he only expects what the court is pleased to allow under the provisions of the act. All that is necessary for Mrs. Halsell to do is to send to Mr. Ball the power of attorney as executrix or administratrix of the estate of her late husband, with a copy of her appointment thereto attached.

Rehoboth Church is a little country place where the mails are very irregular, and I would suggest that you direct your papers to Major Ball here in my care, as they will in this way reach him much sooner. Now, in regard to the claim of H. H. Halsell. This claimant you say is dead, and the claim belongs to his father, who is also deceased, leaving five heirs, all of age; this claim then being personal property must be prosecuted in the name of the administrator of the estate of T. J. Halsell, deceased. If no administrator has been appointed the appointment must be made and a power of attorney executed by him to some one to prosecute the claim. In this case you can have the power of attorney made to yourselves, then you can substitute me, and I will prosecute the case here and 10 divide the fees equally, or you can join me with you in the power of attorney, which is perhaps the best way, as no power of substitution will then be needed. When this is done you can send on the papers, together with a statement of the administrator of the kind of property taken, its value, the time and place when and where taken, the name of the tribe of Indians committing the depredation and any other circumstances attending the capture that are within the knowledge or information of the administrator.

I will then file this suit in the court and send you a copy of them, together with a commission to take such testimony as may be necessary to fully establish the claim. I will also, from time to time, send you a copy of all papers filed in the court, which will be in our joint names, if the power of attorney is made jointly, as I have suggested. No contract for fees is necessary with the claimants as the court fixes the amount. I will also divide fees with you equally in all other cases you may send me. I have a list of all the claims in Texas which I will send you if you will take hold of the matter with me. I should think you might make a very handsome thing out of this business if you can attend to it.

I have made these matters somewhat a specialty and take the liberty of inclosing one of my old circulars which I was using when I commenced with Major Ball.

I think I have now given you a pretty clear idea of this whole business, and shall be pleased to hear from you at your earliest convenience.

Yours very truly, J. DANIELS.

The foregoing has the following endorsement, to wit:

No. 1656. Thomas Ball *vs.* Julia F. Halsell, executrix. Defendant's original answer. Filed Jan'y 8, 1894. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

First Supplemental Petition.

Filed January 20th, 1894.

In the Circuit Court of the United States, Northern District of Texas.

THOMAS BALL
vs. } No. 1656.
JULIA F. HALSELL, Executrix.

Now comes the plaintiff, Thomas Ball, in the above-entitled 11 cause, and files this his first supplemental petition in reply to the amended answer of the defendant, filed January 8th, 1894, and says:

That J. Daniels was never his agent for any purpose whatever, except as hereinafter stated. Plaintiff admits that he entered into a contract with Daniels by which said Daniels agreed to represent him in the actual management of the claim of Halsell *vs.* The U. S. Government for depredations committed by the Kiowa and Commanche Indians; that the only authority the said Daniels had was to look after the actual conduct of the case before the Court of Claims, after the act of March 3rd, 1891, was passed and went into effect; that the said Daniels had no authority to fix the compensation in said case, or to bind this plaintiff by any letter or other communication in reference to the contract entered into between himself and J. G. Halsell, or in any other manner to bind this plaintiff in reference to the compensation he should receive for the prosecution of the suit or claim above referred to; that this plaintiff hired the said Daniels and undertook and agreed himself to pay him his fees; that Daniels had no interest in the fee sued for in this case, or any right to contradict the same; and this plaintiff denies that there was ever any partnership of any kind or character between him and the said Daniels; and that the only power or authority which the said Daniels had was above stated.

And this plaintiff further shows that he never knew of the existence of the letter written by said Daniels to Soward & Martin dated March 25th, 1891, until the death of the said Daniels in April, 1892; and plaintiff says that the first intimation that he ever had of the existence of this letter was after the judgment was rendered in the Court of Claims in June, 1892; all of which this plaintiff is ready to verify.

THOS. BALL.

Personally appeared before me the undersigned authority, a notary public, in and for Dallas county, Thomas Ball, plaintiff in the above-entitled cause, who being duly sworn, says that the matters and things in the foregoing petition are true.

12 Subscribed and sworn to before me this the 20th day of January, 1894.

[SEAL.] S. S. LONG,
Notary Public, Dallas County, Texas.

The foregoing has the following endorsement, to wit:

No. 1656. Thomas Ball *vs.* Julia F. Halsell, executrix. First supplemental petition. Filed Jan'y 20, 1894. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

Judgment.

From the Minutes of the Circuit Court of the United States for the Northern District of Texas, at Dallas, January Term, 1894.

THOMAS BALL
vs.
JULIA F. HALSELL, Ex'tr'x. } No. 1686.

JANUARY 22ND, 1894.

On this day this cause was regularly called for trial and came the parties, plaintiff and defendant, by their respective attorneys, and announce ready, and by an agreement in writing filed herein, a jury is waived, and the issues of fact as well as of law are submitted to the court, and the *jury* having heard the pleadings, evidence and argument of counsel, and having fully considered the same, is of the opinion that the law is for the defendant, and that the plaintiff is not entitled to recover herein, it is therefore ordered and adjudged by the court that the plaintiff, Thomas Ball, take nothing by his action herein, and that the defendant, Julia F. Halsell, executrix of the estate of J. G. Halsell, deceased, go hence without day and have and recover of and from the said plaintiff all costs by her herein incurred, for which let execution issue.

It is further ordered by the court that the officers of court do have and recover of and from each party hereto the costs by them herein respectively incurred, and for which also may execution issue.

Plaintiff's Motion for a New Trial. Filed January 24th, 1894.

In the Circuit Court of the United States for the Northern District of Texas, at Dallas.

THOMAS BALL
vs.
JULIA F. HALSELL, Executrix. } No. —.

13 Now comes the plaintiff in the above-entitled cause, and moves the court to vacate the judgment rendered herein and to grant him a new trial for the following reasons, to wit:

1st. The testimony in the case beyond dispute showed that J. G. Halsell, of whose estate Julia F. Halsell is the executrix, in his lifetime made a contract in writing with the plaintiff, whereby the plaintiff was to prosecute and collect the claim of J. G. Halsell against the Government for depredations committed upon his property by the Kiowa and Commanche Indians, and that for said services the plaintiff was to have received one-half of whatever sum might be awarded to J. G. Halsell, and that about the sum of eighteen thousand dollars was awarded to the said Halsell by the judgment of the Court of Claims, and the money paid to executrix; that the said executrix received into her hands belonging to said estate, property of the value of more than one hundred thousand dollars. These facts being undisputed, the judgment should have been for the plaintiff.

2nd. The court erred in holding:

(1st.) That Congress did by the act of March 3, 1891, cancel and revoke said power of attorney and contract between J. G. Halsell and the plaintiff, above referred —.

(2nd.) The court erred in holding that the money paid under this contract was in the nature of a bounty or donation by the Government. The act shows that such was not its intent and meaning.

CRAWFORD & CRAWFORD,
Attorneys for Plaintiff.

The foregoing has the following endorsement, to wit:

No. 1686. Thomas Ball *vs.* Julia F. Halsell, executrix. Plaintiff's motion for a new trial. Filed Jan'y 24, 1894. J. H. Finks, clerk. By Chas. H. Lednum, deputy.

Order on Motion for New Trial.

From the Minutes of the Circuit Court of the United States for the Northern District of Texas, at Dallas, January Term, 1894.

14 THOMAS BALL
vs.
JULIA F. HALSELL, Ex'tr'x. } No. 1686.

FEBRUARY 5TH, 1894.

On this day came on to be heard the motion of the plaintiff for a new trial, and the court, having heard and considered said motion and the argument of counsel thereon, is of the opinion that said motion is not well taken, and it is ordered and adjudged that the said motion be and it is hereby overruled and refused.

Conclusions of Fact and of Law. Filed February 26th, 1894.

In the U. S. Circuit Court for the Northern District of Texas, at Dallas.

THOMAS F. BALL
vs.
JULIA F. HALSELL, Executrix. } No. 1656.

This cause coming on to be heard, the parties, plaintiff and defendant, appeared in open court and filed a stipulation in writing waiving a jury, and submitted the matters of fact, as well as law, to the court; and thereupon the court finds the following facts, to wit:

1. On the 22nd day of May, 1874, J. G. Halsell entered into an agreement with the plaintiff, Thomas Ball, in reference to the prose-

cution of a claim which the said Halsell had against the Government of the United States, on account of depredations committed by the Kiowa and Com*m*anche Indians on the property of the said Halsell, as follows:

"The State of Texas, }
"*County of Jack,* } *To wit:*

"We, the undersigned parties of the first part, do hereby constitute and appoint Thomas Ball our lawful attorney, to receive and to make, sign and give all necessary acquittances and receipts for one-half of all money which may be received by him as our attorney-at-law, o*n* for prosecuting claims against the United States Government on account of the depredations of the Com*m*anche and Kiowa Indians on our property of horses, mules and cattle, in the State of Texas. Said one-half being the amount agreed by us to pay him of all that he may recover of said Government for said depredations.

"Given under our hands this the 22nd day of May, A. D. 1874.

"(Signed) J. G. HALSELL."

15 Said instrument was duly acknowledged by the said J. G. Halsell the day of its execution.

2. Acting under the authority of the said instrument, the plaintiff, Thomas Ball, presented the claim of J. G. Halsell to the Department of Interior and prosecuted the same before said department, which said department recommended payment to the said Halsell for depredations committed by the Indians of the sum of $19,625.00. No appropriation was made by Congress to pay the amount so awarded.

3rd. That the said J. G. Halsell died in the year 1886, leaving a will, which was duly probated, under which the defendant, Julia F. Halsell, was appointed executrix, without bond; that a very large estate, to wit, about the sum of two hundred thousand dollars, came into her possession as such executrix, and that she now holds the same.

4th. That after the passage by Congress of the act of March 3rd, 1891, entitled, "An act to provide for the adjudication and payment of claims arising from Indian depredations," the said Ball acting under said power of attorney, filed suit on, to wit: the 6th day of March, 1891, in the Court of Claims, under the provisions of said act, to recover from the United States the sum of $19,625.00, that being the amount recommended by the Secretary of the Interior to be paid to J. G. Halsell for depredations committed by the said Kiowa and Com*m*anche Indians.

5th. That afterwards the said Julia F. Halsell, executrix of said J. G. Halsell, was substituted as plaintiff in said cause, and on, to wit: the 16th day of June, 1892, judgment was rendered in favor of the said Julia F. Halsell, executrix of the said J. G. Halsell, and against the United States and the Kiowa and Com*m*anche tribes of Indians, for the sum of $17,720.00; by the terms of said judgment the sum of $1,500.00 was awarded to Thomas Ball, the claimant's attorney, for prosecuting said claim, which sum was fixed by the court, according to the act of March 3rd, 1891, chap. 536, sec. 9, 1st sup. of Revised Statutes, 2nd ed., pages 516 and 519.

6th. Soon after the rendition of said judgment the said sum of
$1,500.00 was paid to the said Thomas Ball by the Govern-
16 ment, and the sum of $17,720.00, less the sum of $1,500.00
paid to said Ball, was remitted to the said executrix, Julia F.
Halsell, and duly received by her.

7th. This suit was filed August 18th, 1893, by Thomas Ball against Julia F. Halsell, executrix of J. G. Halsell, and sought to recover one-half of said sum of $17,720.00, less the $1,500.00 received by Ball as aforesaid, the said Ball claiming to be entitled to this sum under and by virtue of the contract entered into between himself and J. G. Halsell, as set out in these findings, numbered one.

Conclusions of Law.

The court being of opinion that said contract is rendered nugatory, and the provisions therein made for compensation for said attorney, Thomas Ball, is superseded by the ninth section of the act of March 3rd, 1891, and being of opinion that said contract is not enforceable, and that said statute above referred to fixes and provides for the payment of all the compensation which attorneys prosecuting the claim under said act are entitled to receive, judgment is rendered for the defendant.

JOHN B. RECTOR,
U. S. Dist. Judge.

The foregoing has the following endorsement, to wit:

No. 1686. Thomas F. Ball *vs.* Julia F. Halsell, executrix. Conclusions of fact and of law. Filed Febr'y 26th, 1894. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

Assignment of Errors. Filed February 26th, 1894.

In the Circuit Court of the United States for the Northern District of Texas, at Dallas.

THOMAS BALL
vs.
JULIA F. HALSELL, Executrix. } No. 1686.

Now comes Thomas Ball, by his attorneys, and says that in record and proceedings in the above cause in the trial court, there is manifest error in this:

First. The court erred in holding that the contract entered into by J. G. Halsell and Thomas Ball, on the 22nd day of May, 1874, is superseded by the ninth section of the act of Congress of March 3rd, 1891.

Second. The court erred in holding that the said contract was not enforceable, and that said statute above referred to fixed and provided for the payment of all the compensation which attorneys prosecuting claims under said act are entitled to receive.

Third. Upon the facts found by the court, the court erred in not rendering judgment for plaintiff for the amount sued for.

CRAWFORD & CRAWFORD,
Attorneys for Plaintiff.

The foregoing has the following endorsement, to wit:

No. 1686. Thomas Ball *vs.* Julia F. Halsell, executrix. Assignment of errors, filed Febr'y 26, 1894. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

17 *Writ of Error Bond.*

Filed July 3, 1894.

In the Circuit Court of the United States for the Northern District of Texas, at Dallas.

THOMAS BALL
vs. } No. 1686.
JULIA F. HALSELL, Executrix.

Know all men by these presents that we, Thomas Ball, as principal, and —— —— and —— ——, as sureties, are held and firmly bound unto Julia F. Halsell, executrix of the estate of J. G. Halsell, deceased, in the full and just sum of two hundred and fifty ($250.00) dollars, to be paid to the said Julia F. Halsell, executrix, her attorneys, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this the 3rd day of July, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas lately, at a regular term of the United States circuit court in and for the northern district of Texas, sitting at Dallas, January term, 1894, in a suit depending in said court between Thomas Ball, plaintiff, and Julia F. Halsell, executrix, defendant, a judgment was rendered that the said Thomas Ball take nothing by his suit, and that the said Julia F. Halsell, executrix, go hence without day and recover her costs; that the said Thomas Ball having obtained a writ of error and filed a copy thereof in the aforesaid suit, and a citation directed to Julia F. Halsell, executrix, citing and admonishing her to be and appear in not exceeding 30 days from said July 3rd, 1894, at a term of the United States Supreme Court, to be holden at the city of Washington, on the 2nd Monday of October next:

Now, the condition of the above obligation is such that if the said Thomas Ball shall prosecute his writ of error to effect and answer the sum of $1,500.00 was awarded to Thomas Ball, the claimant's attorney, for prosecuting said claim, which sum was fixed by the court, according to the act of March 3rd, 1891, chap. 536, sec. 9, 1st sup. of Revised Statutes, 2nd ed., pages 516 and 519.

6th. Soon after the rendition of said judgment the said sum of $1,500.00 was paid to the said Thomas Ball by the Government, and the sum of $17,720.00, less the sum of $1,500.00 paid to said Ball, was remitted to the said executrix, Julia F. Halsell, and duly received by her. 16

7th. This suit was filed August 18th, 1893, by Thomas Ball against Julia F. Halsell, executrix of J. G. Halsell, and sought to recover one-half of said sum of $17,720.00, less the $1,500.00 received by Ball as aforesaid, the said Ball claiming to be entitled to this sum under and by virtue of the contract entered into between himself and J. G. Halsell, as set out in these findings, numbered one.

Conclusions of Law.

The court being of opinion that said contract is rendered nugatory, and the provisions therein made for compensation for said attorney, Thomas Ball, is superseded by the ninth section of the act of March 3rd, 1891, and being of opinion that said contract is not enforceable, and that said statute above referred to fixes and provides for the payment of all the compensation which attorneys prosecuting the claim under said act are entitled to receive, judgment is rendered for the defendant.

JOHN B. RECTOR,
U. S. Dist. Judge.

The foregoing has the following endorsement, to wit:

No. 1686. Thomas F. Ball *vs.* Julia F. Halsell, executrix. Conclusions of fact and of law. Filed Febr'y 26th, 1894. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

Assignment of Errors. Filed February 26th, 1894.

In the Circuit Court of the United States for the Northern District of Texas, at Dallas.

THOMAS BALL
vs.
JULIA F. HALSELL, Executrix.
No. 1686.

Now comes Thomas Ball, by his attorneys, and says that in record and proceedings in the above cause in the trial court, there is manifest error in this:

First. The court erred in holding that the contract entered into by J. G. Halsell and Thomas Ball, on the 22nd day of May, 1874, is superseded by the ninth section of the act of Congress of March 3rd, 1891.

Second. The court erred in holding that the said contract was not enforceable, and that said statute above referred to fixed and provided for the payment of all the compensation which attorneys prosecuting claims under said act are entitled to receive.

Third. Upon the facts found by the court, the court erred in not rendering judgment for plaintiff for the amount sued for.

CRAWFORD & CRAWFORD,
Attorneys for Plaintiff.

The foregoing has the following endorsement, to wit:

No. 1686. Thomas Ball *vs.* Julia F. Halsell, executrix. Assignment of errors, filed Febr'y 26, 1894. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

17 *Writ of Error Bond.*

Filed July 3, 1894.

In the Circuit Court of the United States for the Northern District of Texas, at Dallas.

THOMAS BALL
vs.
JULIA F. HALSELL, Executrix. } No. 1686.

Know all men by these presents that we, Thomas Ball, as principal, and —— —— and —— ——, as sureties, are held and firmly bound unto Julia F. Halsell, executrix of the estate of J. G. Halsell, deceased, in the full and just sum of two hundred and fifty ($250.00) dollars, to be paid to the said Julia F. Halsell, executrix, her attorneys, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this the 3rd day of July, in the year of our Lord one thousand eight hundred and ninety-four.

Whereas lately, at a regular term of the United States circuit court in and for the northern district of Texas, sitting at Dallas, January term, 1894, in a suit depending in said court between Thomas Ball, plaintiff, and Julia F. Halsell, executrix, defendant, a judgment was rendered that the said Thomas Ball take nothing by his suit, and that the said Julia F. Halsell, executrix, go hence without day and recover her costs; that the said Thomas Ball having obtained a writ of error and filed a copy thereof in the aforesaid suit, and a citation directed to Julia F. Halsell, executrix, citing and admonishing her to be and appear in not exceeding 30 days from said July 3rd, 1894, at a term of the United States Supreme Court, to be holden at the city of Washington, on the 2nd Monday of October next:

Now, the condition of the above obligation is such that if the said Thomas Ball shall prosecute his writ of error to effect and answer all damages and costs if he fail to make good his plea, then the above obligation to be void; else to remain in full force and effect.

THOS. BALL,
Per CRAWFORD & CRAWFORD, *Att'ys.*
M. L. CRAWFORD.
W. L. CRAWFORD.

18 Approved.
JOHN B. RECTOR,
U. S. Dist. Judge.

The foregoing has the following endorsement, to wit:
1686. Thomas Ball *vs.* Julia F. Halsell, executrix. Writ of error bond. Filed July 3, 1894. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

19 *Petition for Writ of Error.*

Filed July 3, 1894.

In the Circuit Court of the United States for the Northern District of Texas, at Dallas, Texas.

THOMAS BALL
vs.
JULIA F. HALSELL, Executrix.
No. 1686.

To the judges of the circuit court of the United States in and for the northern district of Texas, at Dallas:

Your petitioner, Thomas Ball, represents that heretofore, to wit, on January 22nd, 1894, in this honorable court, the above-named Julia F. Halsell, as executrix, recovered a judgment against your petitioner, denying his right to recover the amount sued for by him and that she go hence without day and recover her costs in the proceedings, and in the rendition of said judgment there was error.

Your petitioner shows that the matters in controversy in this case exceed in value the sum of fifteen thousand dollars, and that there is directly involved in this controversy the constitutionality of the 9th section of act of March 3, 1891, of the Congress of the United States, entitled An act to provide for the adjudication and payment of claims arising from Indian depredations.

Your petitioner prays that after an inspection that the writ of error be granted to remove said judgment and proceedings had in said cause to the Supreme Court of the United States for revision and reversal; and in duty bound will ever pray.

CRAWFORD & CRAWFORD,
Att'ys for Plaintiff.

Allowed.
JOHN B. RECTOR,
U. S. Dist. Judge.

The foregoing has the following endorsement, to wit:

No. 1686. Thomas Ball *vs.* Julia F. Halsell, executrix. Petition for writ of error. Filed July 3, 1894. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

20 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the northern district of Texas, at Dallas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Thomas Ball, as plaintiff, and Julia F. Halsell, executrix, as defendant, a manifest error has happened, to the great damage of the said Thomas Ball, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this writ, so that you have the same at the city of Washington in not exceeding thirty days from the 3d day of July, 1894, the regular term of said court to be holden on the 2d Monday of October next, in the said Supreme Court of the United States to be then and there held, that, the record and proceedings aforesaid being inspected, the said United States Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this the 3d day of July, in the year of our Lord one thousand eight hundred and ninety-four.

[The Seal of the U. S. Circuit Court, Northern Dist. Texas, Dallas.]

J. H. FINKS, *Clerk*,
By CHAS. H. LEDNUM, *Deputy*.

Allowed.
JOHN B. RECTOR,
U. S. Dist. Judge.

21 [Endorsed:] No. 1686. Thomas Ball *vs.* Julia F. Halsell, executrix. Writ of error. Filed Jul- 3, 1894. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

22 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Julia F. Halsell, executrix, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden in the city of Washington, not exceeding 30 days from the 3d day of July, 1894, regular term of said court to be holden on the 2nd Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States in and for the northern district of Texas, May term, sitting in Dallas, 1894, wherein the said Thomas Ball is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the party in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this the 3d day of July, in the year of our Lord one thousand eight hundred and ninety-four.

JOHN B. RECTOR,
U. S. Dist. Judge.

23 [Endorsed :] 1686. Thomas Ball *vs.* Julia F. Halsell, executrix. Citation in error. Filed Jul- 3, 1894. J. H. Finks, clerk, by Chas. H. Lednum, deputy.

OFFICE OF U. S. MARSHAL,
NORTHERN DISTRICT OF TEXAS.

I certify that I received the within writ on the 16th day of July, 1894, at Dallas, Texas, and that I executed the same on the 16th day of July, 1894, at Dallas, Texas, by then and there delivering to Frank Reeves, of the firm of Leake, Henry & Reeves, att'ys, a copy of the within citation in error.

P. B. HUNT, *U. S. Marshal.*
ALLIE G. HUNT, *Deputy.*

Fee, $2.00.

24 *Clerk's Certificate.*

I, J. H. Finks, clerk of the circuit court of the United States in the fifth circuit and northern district of Texas, do hereby certify that the above and foregoing is a full, true, and correct transcript of the record, conclusions of law and of facts, assignment of errors, and all the proceedings in cause No. 1686, wherein Thomas Ball is plaintiff and Julia F. Halsell, executrix of the estate of J. G. Halsell, deceased, is defendant, except that the original writ of error and citation in error are included therein instead of copies thereof, as fully as the same remains on file and of record in my office, at Dallas, Texas.

Witness my hand officially and the seal of said court, at Dallas, Texas, this the 16th day of July, A. D. 1894.

[The Seal of the U. S. Circuit Court, Northern Dist. Texas, Dallas.]

J. H. FINKS, *Clerk,*
By CHAS. H. LEDNUM, *Deputy.*

Endorsed on cover: Case No. 15,713. N. Texas C. C. U. S. Term No., 471. Thomas Ball, plaintiff in error, *vs.* Julia F. Halsell, executrix of J. G. Halsell, deceased. Filed October 24, 1894.

Office Supreme Court U. S.
FILED.
DEC 9 1895
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1895.

THOMAS BALL, *Plaintiff in Error,*

vs.

JULIA F. HALSELL, *Executrix of the Will of J. G. Halsell, deceased.*

Term No. 471.

ERROR TO THE UNITED STATES CIRCUIT COURT FOR THE NORTHERN DISTRICT OF TEXAS.

Brief and Argument for Plaintiff in Error.

JOHN J. WEED,
Attorney for Plaintiff in Error.

JOSEPH H. POLKINHORN, PRINTER, 640 D ST. N. W.

Supreme Court of the United States.

OCTOBER TERM, 1895.

THOMAS BALL, *Plaintiff in Error*, vs. JULIA F. HALSELL, *Executrix of the Will of J. G. Halsell, deceased.*	Term No. 471.

IN ERROR TO THE UNITED STATES CIRCUIT COURT FOR THE NORTHERN DISTRICT OF TEXAS.

Brief and Argument for the Plaintiff in Error.

I.

Statement of Case.

This suit was instituted by the plaintiff in error in the United States Circuit Court for the Northern District of Texas, on the 18th of August, 1893, to recover from the defendant the sum of *seven thousand three hundred and sixty dollars* ($7,360.00), with interest thereon at the rate of six per cent. per annum from the 16th of June, 1892.

The plaintiff in error, in his declaration and at the trial, relied upon a contract made between himself and J. G. Halsell, since deceased, dated the 22d of May, 1874, in the words and figures following:

> "State of Texas, } *To wit:*
> *County of Jack.* }
>
> "We, the undersigned parties of the first part, do hereby constitute and appoint Thomas Ball our lawful attorney to receive and to make, sign and give all necessary acquittances and receipts for one-half of all money which may be received by him as our attorney-at-law, for prosecuting claims against the United States Government on account of the depredations of the Comanche and Kiowa Indians on our property, of horses, mules, and cattle, in the State of Texas, said one-half being the amount agreed by us to pay him of all that he may recover of said Government for said depredations.
>
> "Given under our hands this 22d day of May, A. D. 1874.
>
> J. G. Halsell."

(Rec., p. 2.)

The plaintiff averred and proved the performance of the service required by said contract, by securing a judgment against the United States in the Court of Claims in favor of the defendant in error, on the 16th of June, 1892, for the sum of *seventeen thousand seven hundred and twenty dollars* ($17,720.00), and the subsequent payment thereof by the United States to the defendant in error, less the sum of fifteen hundred dollars paid by the United States to the plaintiff in error, upon an allowance made to him by the Court of Claims, and payable out of said judgment, as provided in section

9 of an act entitled "An act to provide for the adjudication and payment of claims arising from Indian Depredations," approved March 3, 1891.

The defendant filed several pleas to the declaration, but the only plea which set up a defence that is material in the consideration of the issues here presented, is as follows:

> "And for further answer, defendant says that the contract described in plaintiff's petition, if such was ever made, was declared void by the ninth section of the act of March 3d, 1891, of the Congress of the United States, entitled 'An act to provide for the adjudication and payment of claims arising from Indian Depredations, and by authority and direction of the same section, an allowance, and all that said act permitted to be paid plaintiff under his said employment, was made to plaintiff in the judgment rendered by said Court of Claims in favor of this defendant, and was paid to him out of the Treasury of the United States." (Rec., pp. 3, 4.)

II.

Conclusions of Fact and Law.

The court having, on the 5th day of February, 1894, rendered a judgment in favor of the defendant filed the following conclusions of fact and Law:

> "1. That the contract as set out in the declaration was proved to have been signed and acknowledged by J. G. Halsell, the defendant's testator.
>
> "2. Acting under the authority of the said instrument, the plaintiff, Thomas Ball, presented the claim of J. G. Halsell to the Department of

the Interior and prosecuted the same before said department, which said department recommended payment to the said Halsell for depredations committed by the Indians, of the sum of $19,625.00. No appropriation was made by Congress to pay the amount so awarded.

"3. That the said J. G. Halsell died in the year 1886, leaving a will, which was duly probated, under which the defendant, Julia F. Halsell was appointed executrix, without bond: that a very large estate, to wit, about the sum of two hundred thousand dollars, came into her possession as such executrix, and that she now holds the same.

"4th. That after the passage by Congress of the act of March 3d, 1891, entitled, 'An act to provide for the adjudication and payment of claims arising from Indian depredations,' the said Ball, acting under said power of attorney, filed suit on, to wit, the 6th day of March, 1891, in the Court of Claims, under the provisions of said act, to recover from the United States the sum of $19,625.00, that being the amount recommended by the Secretary of the Interior to be paid to J. G. Halsell for the depredations committed by the said Kiowa and Comanche Indians.

"5th. That afterwards the said Julia F. Halsell, excutrix of said J. G. Halsell, was substituted as plaintiff in said cause, and on, to wit, the 16th day of June, 1892, judgment was rendered in favor of the said Julia F. Halsell, executrix of the said J. G. Halsell, and against the United States and the Kiowa and Comanche tribes of Indians, for the sum of $17,720.00; by the terms of said judgment the sum of $1,500.00 was awarded to Thomas Ball, the claimant's attorney, for prosecuting said claim, which sum was fixed by the court, according to the act of March 3d, 1891, chap. 536, Sec. 9, 1st sup. of Revised Statutes, 2d ed., pages 516 and 519.

"6th. Soon after the rendition of said judgment the said sum of $1,500.00 was paid to the said Thomas Ball by the Government, and the sum of $17,720.00, less the sum of $1,500.00 paid to said Ball, was remitted to the said executrix, Julia F. Halsell, and duly received by her.

"7th. This suit was filed August 18th, 1893, by Thomas Ball against Julia F. Halsell, executrix of J. G. Halsell, and sought to recover one-half of said sum of $17,720.00, less the sum of $1,500.00 received by Ball as aforesaid, the said Ball claiming to be entitled to this sum under and by virtue of the contract entered into between himself and J. G. Halsell, as set out in these findings, numbered one.

Conclusions of Law.

"The Court being of opinion that said contract is nugatory, and the provisions therein made for compensation for said attorney, Thomas Ball, is superseded by the ninth section of the act of March 3d, 1891, and being of opinion that said contract is not enforceable, and that said statute above referred to fixes and provides for the payment of all the compensation which attorneys prosecuting the claim under said act are entitled to receive, judgment is hereby rendered for the defendant." (Rec., pp. 11 and 12.)

III.

Questions Presented by the Record.

1. Was the contract made between the plaintiff and J. G. Halsell on the 22d of May, 1874, "*rendered nugatory*" and the provisions thereof in regard to making compensation to the plaintiff in

error, for the services rendered by him under said contract, "*superseded*" by the provisions of Section 9 of an act entitled "An act to provide for the adjudication and payment of claims arising from Indian Depredations"?

2. Is not that provision of said section of said act which declares "*That all contracts heretofore made for fees, and allowances to claimant's attorneys are hereby declared void*" in violation of Article V of the Amendments of the Constitution?

3. Are the provisions of said section of said act which limits and provides for the allowance of compensation to attorneys prosecuting suits under the provisions of said act conclusive against the right of the plaintiff in error to be paid for the services rendered by him under said contract according to its provisions?

4. Are the said provisions of said contract rendered "*not enforceable*" in favor of the plaintiff in error, by reason of the provisions of said section of said act, and of the allowance and payment to the plaintiff in error of the sum of Fifteen Hundred Dollars ($1,500.00), as stated in the fifth and sixth paragraphs of the facts stated in the record as the ultimate facts found as the basis of the conclusions of law announced by the court in the judgment rendered herein against the plaintiff in error?

These questions are presented by the conclusions of law announced by the trial judge, when judgment was rendered in favor of the defendant, and by the construction and effect given to the 9th Section of the said act of March 3, 1891, in said conclusions of law.

IV.

Assignments of Errors.

First. The Circuit Court of the United States for the Northern District of Texas erred in deciding that the contract between the plaintiff in error and J. G. Halsell, since deceased, as set out in the plaintiff's declaration and proved at the trial, was "rendered nugatory," and the "provisions therein contained for compensation for said attorney" (the plaintiff in error) "are superseded by the 9th section of the act of March 3d, 1891."

Second. That court erred in deciding that the contract made between the plaintiff in error and John G. Halsell was "not enforcable" in that court.

Third. That court erred in deciding that the provisions of the 9th section of the act of March 3d, 1891, "*fixes and provides for the payment of all the compensation which the attorney prosecuting the claim under said act is entitled to receive.*"

Fourth. That court erred in not rendering a judgment in favor of the plaintiff in error for the amount to which he was entitled under the provisions of his contract with J. G. Halsell, as stated in his declaration.

V.

Legal Propositions, Authorities and Argument.

A. The contract between the plaintiff in error and J. G. Halsell, dated May 22, 1874, was a legal contract, and having been fully performed by the plaintiff in error, he was entitled to be paid the compensation therein stipulated to be paid upon such performance.

The contract between the plaintiff in error and Halsell was nothing more than an ordinary contract between two citizens for the prosecution of a claim against the United States, upon a fee or compensation contingent upon the successful prosecution of a claim which one of the parties to the contract asserted against the United States, on account of depredations alleged to have been committed upon his property by the Comanche and Kiowa Indians.

Contracts, which provide for the payment of compensation to an attorney for services rendered by him in the prosecution of a claim against the United States, which is contingent upon the successful prosecution of such claim, and provides for payment of a part of the amount collected to the attorney collecting the claim, have been sanctioned as legal and enforced in this court.

Wylie vs. *Coxe*, 15 How., 416 ;
Wright vs. *Tebbitts*, 91 U. S., (1 Otto,) 252 ;
Stanton vs. *Embry*, 93 U. S., (3 *Ibid*) 548 ;
Taylor et al. vs. *Bemiss el al.*, 110 U. S., 42, 46.

In the case of *Wylie* vs. *Coxe*, the suit was brought upon a contract which provided for the payment to Coxe of a contingent fee of five per cent. out of any sum he might collect on a claim asserted by Samuel Baldwin, a citizen of the United States, resident in Mexico, against the Republic of Mexico, for personal outrages and losses of property resulting from the alleged unlawful acts of the officers of that government. The claim was finally adjusted and settled by the payment to the legal representatives of Baldwin of the sum of $75,000. The administrator of Baldwin's estate having refused to pay the fee contracted to be paid to Coxe, a bill in equity was filed in the Circuit Court of the District of Columbia to enforce the contract, and to have it declared a lien upon the fund of $75,000 remaining in the hands of the defendant. That court decreed the payment of the amount payable under the contract, with interest from the date the money became payable. This court, in disposing of the question raised, used the following language:

> "We think the contract is proved, also the services rendered under it by the complainant, and that he is entitled to the compensation claimed." * * * *

Again, this court, referring to the contract there considered, further declared as follows:

> "The evidence proves that the complainant was to receive a contingent fee of five per cent. *out of the fund awarded*, whether money or script. This being the contract, it constituted a lien upon the fund whether it should be money or scrip."

In the case of *Wright* vs. *Tebbitts*, the suit was brought upon a contract made by Wright with Tebbitts, who was an attorney-at-law, for the payment of a contingent fee of *ten per cent.* for services to be rendered by him in securing the payment of the claims asserted by Wright against the Choctaw Nation of Indians, under the 50th Article of the Treaty concluded between the United States and said Nation on the 28th of April, 1866. The result of the services rendered by Tebbitts was to secure the payment to Wright the sum of $20,541.28, out of which Tebbitts was entitled to be paid the sum of $2,054.00. Wright having refused to pay Tebbitts, suit was brought by him in the Supreme Court of the District of Columbia, and upon trial thereof he recovered a judgment against Wright for the amount due on the contract. In this court it was urged that the judgment should be reversed, for the following reasons:

1. Because the contract was an assignment of *one tenth* interest in the claim, and therefore void under Section 3477 of the Revised Statutes;

2. Because it is tainted with illegality and immorality, and is against public policy;

3. Because it is champertous, being a bargain to pay one-tenth of whatever might be collected.

This court, answering the *second* and *third* of these objections, used the following language:

> "2. Tebbitts has not engaged in any improper or illegal service. Wright had a claim against the Choctaw Indians, which they, by their Treaty, had agreed to submit to an adjudication by commissioners to be appointed for that purpose. He employed Tebbitts to appear for him professionally before that commission, and enforce his claim. He did appear, and presented an argument in behalf of his client. This is all he did, and all he engaged to do. It was legitimate service rendered in a legitimate employment. To deprive a claimant of the means of obtaining such professional service would be to deprive him, in many instances, of the means of enforcing his claim.
>
> "Such an agreement we held to be valid in Trist v. Child, 21 Wall., 450, for we then said, speaking through Mr. Justice Swayne, 'We

> entertain no doubt * * * an agreement, express or implied, for purely professional services, is valid.' Such services, we say, 'rest on the same principle of ethics as professional services rendered in a court of justice, and are no more exceptionable.' In fact, the committee acting on this claim was a *quasi* court.
>
> "There is nothing illegal, immoral or against public policy, in a professional engagement to present and prosecute such claims before such tribunals."

In the case of *Stanton* v. *Embry*, suit was brought in the Supreme Court of the District of Columbia to recover compensation for services rendered by Robert J. Atkinson, in his life time, as attorney for the defendants in prosecuting a claim in their behalf against the United States before the accounting officers of the Treasury Department. The defendants having refused to make compensation for such services the administrator of Atkinson brought suit against Stanton and recovered a judgment in that court for the sum of $9,185. The defendant prosecuted a Writ of Error upon that judgment to this court.

This court, in deciding the questions there involved, which denied the validity of the contract, or the right to recover compensation for services rendered upon a contingent contract, used the following language :

> "Coming to the merits, the first objection of the defendant is, that the contract set up in the declaration is one for a contingent compensation. Such a defence in some jurisdictions would be a good one, but the settled rule of law in this court is the other way."

Again, the Court, discussing this question, stated the rule in regard to such employment as follows:

> "Professional services, to prepare and advocate just claims for compensation are as legitimate as services rendered in court in arguing a cause to convince a court or jury that the claims presented or defence set up against the claims presented by the other party ought to be allowed or rejected. Parties in such cases require advocates; and the legal profession must have a right to accept such employment and to receive compensation for their services; *nor can courts of justice adjudge such contracts illegal*, if they are free from any taint of fraud, misrepresentation, or unfairness."

In the case of *Taylor et al.* vs. *Bemiss et al.*, a contract had been made by Laura J. Bemiss, widow of John Bemiss, with Taylor and Wood, attorneys at law, of Washington, D. C., to prosecute a claim against the United States, before the Southern Claims Commission authorized by the act of March 3, 1871. The contract between these parties, which was in writing, provided for the payment of a contingent fee of fifty per cent. of the amount which might be recovered. The claim was successfully prosecuted by Taylor and Wood, and was settled by the payment of $27,310. The attorneys received one-half of the above amount under a power of attorney properly executed. The infant children of Mrs. Bemiss filed their bill against Taylor and Wood to recover from them the amount thus received. The validity of the contract between Mrs. Bemiss and her attorneys was attacked in the bill filed, upon various grounds. This court, discussing the question whether the contract under which Taylor and Wood had rendered their services was void, and the money received by them under said contract should be refunded to the heirs of Mrs. Bemiss, used the following language:

> "It remains to be considered whether there is in the contract of employment anything which should require it to be declared void in a court of equity, and the money received under it returned. It was decided in the case of *Stanton* vs. *Embry*, 93 U. S., 548, that contracts by attorneys for compensation in prosecuting claims against the United States were not void, because the amount of it was made contingent upon success, or upon the sum recovered. And the well known difficulties and delays in obtaining payment of just claims, which are not within the ordinary course of procedure of the auditing officers of the government, justifies a liberal compensation in successful cases, where none is to be received in case of failure.
>
> "Any other rule would work much hardship in cases of creditors of small means residing far from the seat of Government, who can give neither money nor personal attention to securing their rights."

These authorities are conclusive of the validity of the contract made between the plaintiff in error and Halsell, as well as of the right of the plaintiff in error to have that contract enforced by appropriate judicial proceedings, *and to be paid the amount stipulated in the contract.*

B. The contract between the Plaintiff in Error and Halsell being a contract authorized by law was protected by the Constitution from the effect of any Act of Congress which would "impair its obliga-

tion", or deprive the Plaintiff in Error of such rights of property as were therein secured to him.

The judgment of the court from which this Writ of Error is prosecuted, is based exclusively upon the provisions of the *ninth* section of the act entitled "An act to provide for the adjudication and payment of claims arising from Indian depredations," approved March 3, 1891, 26 Stats. at Large, 851, which provides as follows:

> "That all sales, transfers or assignments of any such claims, heretofore or hereafter made, except such as have occurred in the due administration of decedent's estates, *and all contracts heretofore made for fees and allowances to claimant's attorneys are hereby declared void.*"

The learned judge who decided this case, declared that the effect of the above statute was to render the said contract "*nugatory*," and to "*supersede*" the provisions of said contract so far as provision was therein made for compensation to the plaintiff in error for services rendered by him in the prosecution and collection of the claim of the defendant testator against the United States. If such *is* the legal effect of that statute, it is unconstitutional and void, for the following reasons:

1st. It impairs the obligations of a lawful contract made between two citizens for the accomplishment of a lawful purpose;

2d. It deprives the Plaintiff in Error of his property without "due process of law";

3d. It is the assumption by Congress of judicial power.

As to the power of Congress over the private contracts of citizens.

The decisions of this court previous to the determination of the case of the *Union Pacific Railway Company* vs. *The United States*, and known as the "Sinking Fund Cases," 99 U. S., 700, had involved the validity of acts of State legislatures, which were alleged to impair the obligations of contracts. There seemed no difficulty in those cases in determining how far a State, by its legislation, could proceed in the direction of passing laws which impaired the obligations of a contract made by a State with a citizen or of contracts made between citizens of a State. In the "Sinking Fund Cases,'' this court was for the first time brought to the consideration of the question as to how far Congress by its legislation had the power to impair the obligations of a contract into which the United States had entered with the Union Pacific Railway Company. In that case the charter granted by Congress had reserved the right to alter, amend, or modify the charter whenever, in the judgment of Congress, it should seem expedient to do so. It was contended in that case, that the act known as the Thurman act, which provided for a funding of the indebtedness of the railroad company, and made provision for the creation of a sinking fund, for the ultimate discharge of that indebtedness, impaired the contract existing between the United States and the railroad compay in regard to the payment of the indebtedness due by the company to the United States. The majority of the court justified the decision there made upon the provisions of the charter granted by

Congress to the company, and it was said, that the legislation of Congress, which provided for a funding of the indebtedness of the company, was justified by that provision of the charter which authorized Congress to alter and amend the charter; and that as the legislation there involved was consistent with the provisions of the charter, and did not *impair*, but made provision for the performance and payment of the contract obligations existing between the United States and the railroad company, the legislation there assailed should be sustained as a legitmate exercise of the power reserved to Congress in the charter.

In considering the question as to how far Congress had the power to pass laws, the effect of which would be the impairment of the obligations of a contract, the court, speaking through Chief Justice Waite, used the following language:

> "*The United States cannot, any more than a State, interfere with private rights*, except for legitimate governmental purposes. They are not included within the constitutional prohibition which prevents States from passing laws, impairing the obligation of contracts, but equally with the States, they are prohibited from depriving persons or corporations of property without due process of law. They cannot legislate back to themselves, without making compensation, the land they have given this corporation to aid in the construction of its railroad. Neither can they by legislation compel the corporation to discharge its obligation in respect to the subsidy bonds otherwise than according to the terms of the contract already made in that connection. The United States are as much bound

> by their contracts as are individuals. If they repudiate their obligation, it is as much repudiation with all the wrong and reproach that term implies, as it would be if the repudiator had been a State, or a municipality, or a citizen."

In dissenting opinions delivered in that case by Justices Strong, Bradley and Field, there was a very useful discussion of general principles which are applicable to the questions involved here. Mr. Justice Strong there used the following language:

> "It is manifest that by this contract the government acquired a vested right to payment at the time and in the mode specified, as well as to preference of transportation and transmission of dispatches; and the company acquired a vested right to retain the consideration given for its assumption—that is, a vested right to withhold payment until by the terms of the contract payment became due. The contract implied an agreement not to call for payment or additional security before that time. There is no technicality about vested rights. Most of them grow out of contracts, and, no matter how they arise, they are all equally sacred, equally beyond the reach of legislative interference. A vested right of action is property in the same sense in which rights to tangible things are, and is equally protected. Whether it springs from contract or from other rules of the common law, it is not competent for the legislature to take it away."

Mr. Justice Bradley used the following language:

> "The power of Congress, even over those subjects upon which it has the right to legislate, is not despotic, but is subject to certain constitu-

tional limitations. One of these is, that no person shall be deprived of life, liberty or property without due process of law; another is, that private property shall not be taken for public use without just compensation; and a third is, that the judicial power of the United States is vested in the Supreme and inferior courts, and not in Congress. It seems to me that the law in question is violative of all these restrictions—of their spirit at least, if not of their letter; and a law which violates the spirit of the Constitution is as much unconstitutional as one that violates its letter. For example, although the Constitution declares only that private property shall not be taken for *public* use without just compensation, and does not expressly declare that it shall not be taken for private use without compensation, or, in other words, does not declare that the property of one person shall not be taken from him and given to another without compensation, yet no one can reasonably doubt that a law which should do this would be unconstitutional, because the prohibition to do it is within the spirit of the prohibition that is given, it being the greater enormity of the two."

Mr. Justice Field said:

"In the second place, legislation impairing the obligation of contracts impinges upon the provision of the constitution which declares that no one shall be deprived of his property without due process of law; and that means by law in its regular course of administration through the courts of justice. Contracts are property, and a large portion of the wealth of the country exists in that form. Whatever impairs their value diminishes, therefore, the property of the owner; and if that be effected by direct legislative action operating upon the contract, for-

> bidding its enforcement or transfer, or otherwise restricting its use, the owner is as much deprived of his property without due process of law as if the contract were impounded, or the value it represents were in terms wholly or partially confiscated."

If Congress has not the power to pass laws which impair the obligations of contracts to which the United States is a party, it is impossible to find in any of the grants of power committed to Congress by the constitution, any authority to pass a law by means of which the contracts between individual citizens shall be impaired and declared void.

In the case of *Fletcher* vs. *Peck*, 6 Cranch, 87, 136, the question as to the power of a State to pass laws by means of which the obligations of a contract which had been executed, would be impaired; and Chief Justice Marshall there discussed the prohibition of the constitution against the impairment of the obligations of a contract as being applicable to *executory*, as well as executed contracts. The language used in that case is as follows :

> "Since, then, in fact, a grant is a contract executed, the obligation of which continues, and since the Constitution uses the general term 'contract', without distinguishing between those which are *executory* and those which are executed it must be construed to comprehend the latter as well as the former. *A law annulling conveyances between individuals*, and declaring that the grantors should stand seized of their former estates, notwithstanding those grants would be as repugnant to the constitution as a law discharging the vendors of property from the obligation of executing their contracts [redacted] by

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> Conveyances. It would be strange if a contract to convey was secured by the Constitution, while an absolute conveyance remained unprotected."
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> * * * * * * *
>
> "*Is the clause to be considered as inhibiting the State from impairing the obligation of contracts between two individuals*, but as exluding from that inhibition contracts made with itself? The words themselves contain no such distinction. They are general, and are applicable to contracts of every description."

At the time of the enactment of the statute which attempted to declare "*void*" the contract between the plaintiff and Halsell, the contract remained *executory*. The plaintiff, previous to that date, had however secured an allowance to the claimant, by the Secretary of the Interior, on account of the claim specified in the contract, to the amount of $19,625.00; but he had not then earned nor become entitled to receive the fruits of the contract, as a contract fully performed by him. The contract with Halsell, vested in the plaintiff in error the right to render his services in the prosecution of said claim, and to be paid for such services according to the terms of the contract. The obligation of the plaintiff was to secure the payment of the claim. The obligation of Halsell wa to pay the plaintiff out of the claim, one-half of the amount paid by the United States.

These were the *obligations* of the contract; for the obligation of all contracts is their binding force on the parties who make them. It is exceedingly plain, therefore, *that the obligation of a contract is impaired* whenever the right of either party to enforce its provisions, by means of such appropriate judicial proceedings as were authorized when the contract was made, have been destroyed, or taken away *by legislative enactment.* This conclusion necessarily results from the further proposition that the laws by means of which a contract may be enforced, enter into and form a part of the contract itself, and are referred to in all contracts as inherent provisions contained in them as the measure of the obligation and the right conferred. Any law, therefore, which in its operation and effect results in a denial or obstruction of rights which have accrued under a contract, is obnoxious to the constitutional prohibition against laws impairing the obligations of a contract.

The *effect* of the statute under consideration, if it shall be sustained, is to deny to the plaintiff in error the right to maintain any action upon his contract with Halsell. It does not change or impair the *remedy* for the enforcement of the contract which existed when the contract was made. It attempts to make illegal and void a lawful contract between two citizens, without any consideration of, or regard for, the rights secured to the plaintiff in error by the contract. It is safely asserted that in no statute heretofore enacted has a power so dangerous and subversive of those rights of property which result from and grow out of the existence of valid contracts, been claimed to exist in Congress.

b. That statute if valid deprives the plaintiff of his property without "due process of law."

The plaintiff's contract with Halsell was property. He had the right to perform its obligations. He had the right upon such performance to receive the compensation therein provided for the services he had contracted to render to Halsell. He had the right to resort to the courts, and have a judicial determination of the rights conferred by his contract if Halsell, or his legal representative, refused payment according to the terms of the contract. These principles are fundamental and elementary, and yet they are all violated if Congress has the power, by legislative enactment, to declare *void* a valid and binding contract made between two citizens before the passage of that statute.

In Cooley's Constitutional Limitations, 6th Ed., p. 208, this subject is discussed in the following language:

> "The Bills of Rights in the American Constitutions forbid that parties shall be deprived of property except by the law of the land; but if the prohibition had been omitted, a legislative enactment to pass one man's property over to another would nevertheless be void. If the act proceeded upon the assumption that such other person was justly entitled to the estate, and therefore it was transferred, it would be void, because judicial in its nature; and if it proceeded without reasons it would be equally void, as neither legislative nor judicial, but a mere arbitrary fiat. There is no difficulty in saying that any such acts, which under pretence of exercising one power is usurping another, is opposed to the constitution and void."

The author cites in support of the above proposition *Bowman* vs. *Middleton*, 1 Bay, 252; *Wilkinson* vs. *Leland*, 2 Pet., 267; *Terrett* vs. *Taylor*, 9 Cranch, 43; Ervine's Appeal, 16 Pa. St., 226.

In that connection the author quotes from the language of Judge Nelson, in the case of the *People* vs. *Morris*, 13 Wend., 325, 328, as follows:

> "It is now considered an universal and fundamental proposition in every well regulated and properly administered government, whether embodied in a constitutional form or not, that private property cannot be taken for strictly private purposes at all, nor for public use without a just compensation; and that the obligation of contracts cannot be abrogated or essentially impaired. These and other vested rights of the citizen are held sacred and inviolable, even against the plenitude of power of the legislative department."

And yet it must be conceded that if the provisions of the statute above quoted shall be sustained, the result will be the deprivation of the plaintiff in error of all property rights in his contract with the defendant's testator, except such as the act has provided in other parts of the section containing the provision which declares the contract made by Halsell with the plaintiff in error void.

It is clear that the Plaintiff in Error upon the performance of his contract, became entitled to have and demand from Halsell the sum of $8,860.00. The effect of the legislation which here attracts attention was and is to take from the plaintiff in error the sum of $7,360.00 and return it to the estate of Halsell, without any judicial investigation or consideration of the rights of the plaintiff in error under his contract with Halsell. Surely this result deprived the plaintiff in error of the sum of $7,360 by legislative enactment, and not by process of law.

c. The act was the assumption by Congress of powers which were strictly of a judicial character.

To declare a contract between two citizens void, involves the exercise of judicial power. The ascertainment of rights existing by virtue of a valid contract also involves the exercise of judicial power. If there were in the contract with Halsell and the plaintiff in error any provisions which made the contract void, their character could be determined only by the courts having jurisdiction of the parties, and of the subject of the controversy. If there were any facts and circumstances which relieved Halsell from his obligation to perform the contract they were exclusively of judicial cognizance. It was beyond the power or the jurisdiction of Congress to enter upon any inquiry in regard to the character of that contract, or the reasons upon which it should be declared void. These were subjects and questions entirely beyond the jurisdiction of Congress. They belonged exclusively to the judicial department of the Government. If the plaintiff was to be deprived of his property in the contract by having it declared void, and Halsell was to be released and discharged from his obligations under the contract by the payment of a sum less than the contract required him to pay upon its performance, the plaintiff had the right to have notice, and to be informed of the facts upon which the validity of his contract and his right to compensation under its promises was to be made to depend. It requires no argument to demonstrate the proposition that the determination of all such controversies, whenever they arise between citizens where courts exist, are wisely committed to the *judicial* and not the legislative department of the Government. The jurisdiction and powers of each of the great departments of the Government are so well defined and so distinct that neither may exert the powers or exercise the jurisdiction conferred upon the other. If it shall at any time happen that Congress shall pass laws which invade, or destroy the exclusive powers and prerogatives which are committed to and vested in the Executive or Judicial Departments, it belongs exclusively to the Judicial Department to determine their validity. If Congress should pass an act the effect of which would be to deprive a citizen of his property by legislative enactment, it would be the duty of the judicial department to declare such act unconstitutional and void, since an act of Congress, is not "*due process of law.*"

In the case of the *United States* vs. *Klein*, 13 Wall., 123, this court was brought to the consideration of the validity of a provision contained in an act of Congress, approved July 12, 1870. The act there considered was contained in the act making appropriations for the Legislative, Executive, and Judicial expenses of the Government for the year ending June 30, 1871. The act attempted to make the fact that a person who had been pardoned for participation in the late rebellion evidence of the fact that he was guilty of giving aid and comfort to that rebellion; and required the Court of Claims, and this court, on appeal, whenever the fact of such pardon was made to appear, to dismiss the case in the Court of Claims, and if an appeal in any such case was pending here, this court was required to dismiss such appeal. This court, deciding that legislation to be void by reason of the fact that it invaded the domain of both the Executive and Judicial Departments, used the following language:

> "It seems to us that this is not an exercise of the acknowledged power of Congress to make exceptions and prescribe regulations to the appellate power."
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> * * * * * * *
>
> "We must think that Congress has inadvertently passed the limits which separates the legislative from the judicial power.
>
> "It is of vital importance that these powers be kept distinct. The constitution provides that the judicial power of the United States shall be vested in one Supreme Court and such inferior courts as the Congress shall from time to time ordain and establish. Congress has already provided that the Supreme Court shall have jurisdiction of the judgments of the Court of Claims on appeal. Can it prescribe a rule in conformity with which the court must deny to itself the jurisdiction thus conferred because, and only because, its decisions in accordance with settled law, must be adverse to the Government and favorable to the suitor? This question seems to us to answer itself.
>
> "The rule prescribed is also liable to just exception as impairing the effect of a pardon, and thus infringing the constitutional power of the Executive.
>
> "It is the intention of the Constitution that each of the great co-ordinate departments of the Government—the Legislative, the Executive and the Judicial—shall be, in its sphere, independent of the others. To the executive alone is entrusted the power of pardon; and it is granted without limit. Pardon includes amnesty. It blots out the offense pardoned and removes all its penal consequences. It may be granted on conditions. In these particular pardons, that

> no doubt might exist as to their character, restoration of property was expressly pledged; and the pardon was granted on condition that the person who availed himself of it should take and keep a prescribed oath.
>
> "Now it is clear that the legislature cannot change the effect of such a pardon any more than the executive can change a law. Yet this is attempted by the provision under consideration. The court is required to receive special pardons as evidence of guilt and to treat them as null and void. It is required to disregard pardons granted by proclamation on condition, though the condition has been fulfilled, and to deny them their legal effect. This certainly impairs the executive authority and directs the court to be instrumental to that end.
>
> "We repeat, that it is impossible to believe that this provision was not inserted in the appropriation bill through inadvertence."

So in the present case, that provision of the *ninth* section of the act which declares the contract between the plaintiff in error and Halsell to be void, is not conclusive of the rights of plaintiff under his contract, and is unconstitutional and void for the reasons stated in the commencement of the argument here made upon the character and effect of said provision upon the rights of the plaintiff in error under said contract.

C. The provisions of the ninth section of the act which authorized "the adjudication and payment of claims arising from Indian Depredations," was no part of the grant of jurisdiction conferred upon the Court of Claims by the first section of that act; and the provisions of that section may be declared void without taking away the jurisdiction conferred by the first section.

The jurisdiction of the Court of Claims over the subject of claims resulting from Indian Depredations, was completely conferred without limitation, condition, or restriction, except as provided in the first and second sections of the act of March 3, 1891. The first section declares that said court shall have and possess jurisdiction and authority to inquire into and *finally adjudicate, in the manner provided in that act*, all claims which belonged to either of the following classes:

First. All claims for property of citizens of the United States taken or destroyed by Indians belonging to any band, tribe, or nation, in amity with the United States;

Second. Of all claims or cases which have been examined and allowed by the Interior Department;

Third. To such cases as were authorized to be examined under the act of Congress making appropriation for the expenses of the Indian Department and for fulfilling Treaty stipulations for the year ending June 30, 1886, and for other purposes, approved March 3, 1885, and subsequent acts relating to all claims specified in the act of March 3, 1885;

Fourth. Of all just offsets and counter-claims, to any claims of either of the preceeding classes which may be before the court for determination.

The *limitations upon the jurisdiction thus conferred* were contained in the second section of the act which excluded from the consideration of the court the claims specified as follows:

First. All claims for depredations which had accrued previous to July 1, 1865, unless such claims previous to the date of the act had been presented with evidence to some one of the departments of the Government or officials specified in said act;

Second. It excluded from the jurisdiction of the court all claims which should not be presented within three years from the date of the passage of the act;

Third. It provided that no suit or proceeding should be allowed for any depredation committed after the passage of the act.

These are the only provisions of the statute which need be considered in connection with the provisions of the ninth section.

It is conceded that the Court of Claims would have no jurisdiction of these claims except under the provisions of this act; and the practical question is whether the *ninth* section of the act is so interwoven with or inter-dependent upon the *first* section as that the jurisdiction of the court over these cases will be destroyed if the provision of the *ninth* section, to which we have already referred, shall be declared unconstitutional and void.

It is conceded, also, that the United States cannot be sued without its consent, and in the manner provided in the statute conferring the jurisdiction. The concession of these propositions, however, is not an admission of the further proposition, that the United States may declare contracts between citizens for the prosecution of these claims, made previous to the passage of that act, void as a condition precedent to the right of the citizen to invoke the jurisdiction of the Court of Claims as provided in the *first* section of the act. It is a sufficient answer to such a contention, that neither the first, nor any other section of the act, imposed such a condition upon any citizen who had sustained loss by reason of Indian Depredations.

The defendant's testator was a citizen of the United States. He had sustained losses by Indian depredations alleged to have been committed by the Comanche and Kiowa Indians. He had presented his claim for said losses to the Commissioner of Indian Affairs, and the Secretary of the Interior. He had, previous to the date of the act, secured an allowance by the Secretary of the Interior on account of said claims, for the sum of $19,625.00. These facts being averred in the petition filed by the defendant in error gave the Court of Claims jurisdiction of the case under the *second* clause of the *first* section of the act; and the proof of those facts entitled the defendant to a judgment, unless such proceedings were taken therein as were authorized by the *fourth* section of the act. There are no conditions other than those above stated, which imposed upon a claimant under the provisions of said act any limitations, or terms, upon which a citizen who has sustained losses by reason of Indian Depredations should have the right to institute his suit to recover compensation for said losses in the Court of Claims under the provisions of that act.

The jurisdiction conferred upon that court by that act, "to inquire into and adjudicate," was limited to an inquiry into the claims of citizens of the United States for property taken or destroyed by Indians who belonged to any band, tribe, or nation in amity with the United States. The act neither in terms, nor by implication, conferred upon the Court of

Claims jurisdiction of any other subject. It was not within the power of Congress to confer upon that court, as now constituted and organized, jurisdiction to hear and determine controversies between citizens in regard to their obligations and rights *under contracts to which the United States was not a party.* The act only provided a *judicial* in the place of an Executive and imperfect remedy for the enforcement of an existing and recognized right; for the right of a citizen to have indemnity for any losses he may have sustained by reason of depredations committed by any Indian or Indians belonging to any tribe in amity with the United States, was recognized, and the payment of such indemnity guaranteed by the United States previous to the passage of the act of March 3, 1891. The United States, as early as the year 1785, adopted the policy of making treaties of peace with the different Indian Tribes then within its limits; and that policy was continued until the passage of the act of March 3, 1871, (16, Stats. at Large, p. 506). The first act of Congress which made provision for indemnification to the citizen for losses resulting from Indian Depredations was enacted on the 19th of May, 1796, and was as follows :

> "That if any Indian or Indians belonging to any tribe in amity with the United States shall come into any State or Territory inhabited by citizens of the United States, and there take, steal or destroy any horse, horses, or other property belonging to any citizen or inhabitant of the United States, or of either of the Territorial Districts of the United States * * * * * it shall be the duty of such citizen or inhabitant to make application to the Superintendent, or such other person as the President of the United

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The defendant's testator was a citizen of the United States. He had sustained losses by Indian depredations alleged to have been committed by the Comanche and Kiowa Indians. He had presented his claim for said losses to the Commissioner of Indian Affairs, and the Secretary of the Interior. He had, previous to the date of the act, secured an allowance by the Secretary of the Interior on account of said claims, for the sum of $19,625.00. These facts being averred in the petition filed by the defendant in error gave the Court of Claims jurisdiction of the case under the *second* clause of the *first* section of the act; and the proof of those facts entitled the defendant to a judgment, unless such proceedings were taken therein as were authorized by the *fourth* section of the act. There are no conditions other than those above stated, which imposed upon a claimant under the provisions of said act any limitations, or terms, upon which a citizen who has sustained losses by reason of Indian Depredations should have the right to institute his suit to recover compensation for said losses in the Court of Claims under the provisions of that act.

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Claims jurisdiction of any other subject. It was not within the power of Congress to confer upon that court, as now constituted and organized, jurisdiction to hear and determine controversies between citizens in regard to their obligations and rights *under contracts to which the United States was not a party.* The act only provided a *judicial* in the place of an Executive and imperfect remedy for the enforcement of an existing and recognized right; for the right of a citizen to have indemnity for any losses he may have sustained by reason of depredations committed by any Indian or Indians belonging to any tribe in amity with the United States, was recognized, and the payment of such indemnity guaranteed by the United States previous to the passage of the act of March 3, 1891. The United States, as early as the year 1785, adopted the policy of making treaties of peace with the different Indian Tribes then within its limits; and that policy was continued until the passage of the act of March 3, 1871, (16, Stats. at Large, p. 506). The first act of Congress which made provision for indemnification to the citizen for losses resulting from Indian Depredations was enacted on the 19th of May, 1796, and was as follows :

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> States shall authorize for that purpose, who, upon being furnished with the necessary documents and proof, shall, under the direction or instruction of the President of the United States, make application to the Nation or Tribe to which such Indian or Indians shall belong, for satisfaction in a reasonable time, not exceeding eighteen months; * * * * * And in the meantime, in respect to the property so taken or destroyed, the United States guarantee to the party injured an eventual indemnification: And provided further, that it shall be lawful for the President of the United States, to deduct such sum or sums as shall be paid for the property taken, or stolen, or destroyed by any such Indians, out of the annual stipend which the United States are bound to pay to the tribe to which such Indians shall belong." (1 Stat. at Large, p. 472.)

Other acts consistent with the policy thus declared were subsequently passed by Congress as follows:

Act of March 3, 1799, (1 Stat. at Large, p. 747); Act of March 30, 1802, (2 Stat. at Large, p. 143); Act of June 30, 1834, (4 Stat. at Large, p. 729).

The act of February 28, 1859, (11 Stat. at Large, p. 401, Section 8,) repealed so much of the Act of 1834 as promised indemnification by the United States; but by an act dated May 29, 1872, (17 Stat. at Large, p. 190, section 7,) now incorporated in and made part of the Revised Statutes, as section 469, it was provided as follows:

> "The Secretary of the Interior shall prepare and cause to be published such regulations as he may deem proper, prescribing the manner of presenting claims arising under laws or treaty stipulations, for compensation for depredations committed by the Indians, and the decree and

> character of the evidence necessary to support such claims; he shall carefully investigate all such claims as may be presented, subject to the regulations prepared by him ; and no payment on account of any such claim shall be made without a specific appropriation therefor by Congress."

The enactment of that statute was a practical return to the policy declared in the act of 1796 ; and a renewed recognition of the obligation of the United States to secure to those citizens who had sustained losses by Indian Depredations, which had been committed by Indians in amity with the United States, that "*eventual indemnification*" which was guaranteed by that act. There have been enacted since the passage of the act of 1872, statutes which had for their purpose a continuation of the investigation and examination of these claims as provided in that act. These acts were the acts of March 3, 1885, 23 Stats. at Large, 376 ; Act of May 15, 1886, 24 Stats. at Large, 44 ; Act of March 2, 1887, 24 Stats. at Large, 464; Act of June 29, 1888, 25 Stats. at Large, 234 ; Act of March 2, 1889, 25 Stats. at Large, 998 ; Act of August 19, 1890, 26 Stats. at Large, 356.

The Secretary of the Interior, acting under the mandate of these statutes, reported to Congress from year to year a large number of claims, both allowed and disallowed, which belonged to this class ; and Congress authorized the payment of a few of them by special acts of appropriation.

The legislation upon this subject, to which the attention of the Court has been here directed, justifies the statement that the purpose and object to be accomplished by the enactment of these statutes was the fulfillment of the promise and the observance of that guarantee of "*eventual indemnification*" contained in the act of 1796. These statutes pledged the faith of the United States to the indemnification of the citizen for losses resulting from Indian Depredations committed by any Indians in amity with the United States. The indemnity was to be paid out of funds received by the Indians from the United States, if there were such funds available for that purpose; and if there were no such funds belonging to the depredating Indians, which were under the control of the United States, then the United States, by those statutes, assumed the obligations of paying the citizen the amount of indemnity found to be payable on account of such depredations. The act of March 3, 1891, in its *sixth* section, contains an express recognition of the obligations theretofore assumed by the United States, in regard to the payment of said claims, for it was there provided, that "if no annuity fund, or appropriation is available" for the purpose of paying the claims for which the Court of Claims should render judgment, under the provisions of said act, "*then the amount of the judgment shall be paid from the Treasury of the United States.*

It is clear, therefore, that the act of March 3, 1891, created for the citizen no right to indemnity for losses resulting from Indian Depredations, which did not previously exist. *That act only recognized antecedent existing obligations*, and made specific provision for a *judicial ascertainment* of the amount due to the citizen, on account of losses which the United States had already assumed the obligation to pay. The executive and Congressional proceedings, which had been authorized and provided for the purpose of ascertaining the character, amount and extent of these claims, had proved unsatisfactory to the Government, and disappointing to the citizen; but there had been at all times in these executive and legislative proceedings in respect to these claims, *a recognition of the continuing obligation of the United States to provide "ultimate indemnification" for such losses as were specified in the FIRST section of the act of March* 3, 1891." The existence of this obligation and the fact of a loss sustained by the citizen, which was within the terms of the obligation, created in favor of the citizen *a claim against the United States.* This claim constituted a right of property which was in no wise dependent upon any provision of that act for its existence. Such claims, although no provision of law existed for the ascertainment of their validity and amount, constituted such rights of property as are recognized by this court.

In the case of *Erwin* vs. *The United States*, 97 U. S., (7 Otto, 392, 397,) this court was brought to the consideration of the question as to whether a claim asserted by Erwin against the United States for the proceeds of cotton taken from him by the military forces of the United States during the late rebellion, constituted such a right of property as passed to Erwin's assignee in bankruptcy under the Bankrupt Act. This court, in deciding that question, used the following language:

> "When the appellant filed his petition in bankruptcy, his claim against the Government was property, though of uncertain value. It

> was a claim for the proceeds of goods which once belonged to him, and of the possession of which he had been deprived by the action of the Government. Whether this was done rightfully or wrongfully *does not affect the character of the claim as property*, though it may affect its validity and value. Claims for compensation for the possession, use or appropriation of tangible property, constitute personal estate equally with the property out of which they grow, although the validity of such claims may be denied, and their value may depend upon the uncertainties of litigation, or the doubtful result of an appeal to the legislature.
>
> "Demands against the Government, if based upon considerations which would be valid between individuals, such as services rendered or goods taken, are property, although there be no court to investigate and pass upon their validity, and their recognition and payment may depend upon the caprice or favor of the legislature."

In the case of *Comyges* vs. *Vasse*, 1 Pet. 193, Mr. Justice Story, speaking for this court, says:

> "That it might in general be affirmed, that vested rights, *ad rem* and *in re*, possibilities coupled with an interest, and claims growing out of and adhering to property, will pass by assignment."

It is very clear from these authorities, and as the result of a consideration of the statutes to which reference has here been made, that *no new right of property* was created or assured to a citizen of the United States whose property had been taken or destroyed by Indians in amity with the United

States, by virtue of any of the provisions contained in the act of March 3, 1891.

D. A statute which is remedial in its character, and provides for the judicial determination of claims against the United States, is neither "an act of grace," a bounty, a gift, nor a donation.

The act of March 3, 1891, was an act to provide for the judicial ascertainment of the character, extent, and amount of the existing obligations of the United States to its citizens for losses sustained by them in consequence of the commission of Indian depredations; and also to make more specific and satisfactory provision for the payment and satisfaction of such claims. It was a remedial statute; for it substituted a *judicial* for an executive and legislative determination of the rights and claims which were within the provisions of the *first* section of that act. It gave a *new remedy* and jurisdiction for the adjudication of existing rights, to an existing judicial tribunal. The different sections of that statute, except the *ninth*, contain appropriate provisions for the complete administration of the jurisdiction conferred; and are in perfect harmony with the purposes and objects to be accomplished by the exercise of the jurisdiction conferred by the *first* section of the act.

The recognized rules for the interpretation of such a statute, are neither obscure nor doubtful, and are as follows:

1st. That remedail statutes, which are enacted to supply defects in the existing law, whether arising from the inevitable imperfection of human legislation, from change of circumstances, from mistake, *or any other cause*, are to be construed liberally, to carry out the purpose of the enactment, and advance the remedy contemplated by the legislature. (Endlich on Interpretation of Statutes, Sects. 107, 108 and 109, and authorities there cited)

2d. That a remedial statute which authorizes suits against the State is to be strictly construed only so far as the subjects and persons to which the jurisdiction is conferred relates, but must have a liberal and equitable construction for the purpose of making effective the jurisdiction vested in the tribunal which is to administer the powers derived from the statute.

This court, in the case of *DeGroot* vs. *United States*, 5 Wall., 419, speaking of the jurisdiction of the Court of Claims, said :

> "If, therefore, the Court of Claims has the right to entertain jurisdiction of cases in which the United States is defendant and to render judgment against that defendant, it is only by acts of Congress granting such jurisdiction, and is limited precisely to such cases, *both in regard to parties and to the cause of action as the Congress has prescribed.*"

In the case of the *United States* vs. *Clyde*, 13 Wall., 35, this court declared that a rule of practice adopted by the Court of Claims was void, because its effect was to restrict the jurisdiction conferred upon that court by the statute.

In the case of the *United States* vs. *Klein*, 13 Wall., 128, this court declared that the Court of Claims is invested with all the functions of a court;

and that while Congress may confer or withhold the right of appeal from its decisions, it cannot prescribe to it a rule of decision for cases which it is to decide.

In the case of *United States* vs. *Anderson*, 9 Wall. 56, it was contended that the Court of Claims had no jurisdiction to render judgment in favor of a claimant who brought his suit under the provisions of the Abandoned and Captured Property Act, because that act only authorized the owner of cotton claimed to prefer his claim to the proceeds thereof in the Court of Claims"; and that this language was not sufficient to authorize that court to render a judgment for the amount of such proceeds. This court considering that objection, declared that to so construe that act would require this court to decide that Congress, for the cases included in that act, intended to constitute the Court of Claims a mere Commission; and that such a purpose was not to be imputed to Congress in the absence of an express declaration to that effect.

These authorities furnish sufficient reasons for the assertion of the proposition that where a judicial remedy is given to the citizen to institute a suit against the United States the court will so exercise and administer the jurisdiction conferred, as to *advance* rather than defeat the remedy.

The principles of construction to be applied in the administration of such a remedial statute, as that which here attracts attention, being determined, it may be useful to consider whether the right of a citizen to institute a suit under the provisions of said act depends upon the provisions of the *ninth* section; or, to state the proposition in another form, is the right to file a petition as provided in the *third* section of the act, and to have such further proceedings as are provided in the *fourth*, *fifth*, *sixth*, *seventh* and *eighth* sections, dependent upon an enforcement of the provisions of the *ninth* section? This question answers itself; there are but *two* provisions of that section which were not already incorporated in the Revised Statutes. Those provisions are as follows:

1st. That which declared *void* all contracts for fees to be paid to attorneys for services rendered in the prosecution of said claims made with claimant's attorneys previous to the date of said act;

2d. That provision which authorized the Court of Claims to allow to claimants' attorneys such parts of the amount of judgment payable to the claimant "as shall be allowed by the court for prosecuting said claim, which amount may be paid direct to such attorneys, *and the allowance to claimants' attorneys shall be regulated and fixed by the court at the time of rendering judgment in each case, and entered of record as part of the findings thereof;* but in no case shall such allowance exceed fifteen per cent. of the judgment, except in claims of less amount than five hundred dollars, or where unusual services have been rendered or expenses incurred by the claimant's attorney, in which case not to exceed twenty per cent. *shall be allowed by the court.*"

It is urged that the existence of these provisions in the ninth section are a limitation upon, or a condition of, the exercise by the court of the jurisdiction conferred by the first section of the act; and that, therefore, the jurisdiction conferred by the *first* section cannot be exercised without a recognition of and enforcement of the provisions of the *ninth* section. This proposition cannot be maintained unless there is irreconcilable conflict between the provisions of the *first* and *ninth* sections. There is no conflict between these sections of the statute; for the *first* confers the jurisdiction "to inquire into and finally adjudicate all claims" for Indian depredations specified in the first three paragraphs of the *first* section of the act; while the *ninth* section deals with subjects not in any manner connected with the exercise of the jurisdiction or the rendition of the judgment. The provisions of the *ninth* section may be held entirely inoperative and of no effect, and yet the other sections of the statute be given full force and effect.

It is conceded that the courts must give effect to the provisions of the *ninth* section, unless it contains such unconstitutional provisions as requires the court to declare it inoperative and void. If the provisions of the *ninth* section shall be declared to have heen valid and binding upon Halsell, still neither its provisions, nor their enforcement, could in any manner affect the rights of the plaintiff in error, because he was in no manner a party to the proceedings under which the Court of Claims allowed him the sum of fifteen hundred dollars for the services rendered by him to Halsell under the contract of May 22, 1874, *and he is not in this proceeding concluded by the action of the Court of Claims in allowing him that sum.*

It was earnestly contended by the learned counsel who represented the defendant in error in the court below as follows:

1st. That the United States could not be compelled to either pay such claims, or to be sued therefor without their own consent.

2d. That the permission given the claimant to sue in the Court of Claims *was an act of grace on the part of the United States, and was subject to whatever conditions Congress saw proper to impose.*

3rd. That the right of the Government to deny any remedy, *involved the right to grant the remedy subject to conditions*, and that a remedy given only upon express conditions, cannot be availed of and the conditions repudiated.

4th. That it is not to be assumed that the jurisdiction exercised would have been conferred upon the Court of Claims *except upon the conditions stated in the body of the act.*

5th. That it was in the power of Congress to provide as a condition of its consent to be sued, *that a certain portion of the money should go to the benefit of the injured claimant, and to place a limit upon the extent to which it should be diminished under the guise of attorneys fees.*

It is exceedingly plain from the language of the different sections of the act of March 3, 1891, that the purposes of the act as expressed in its title and in the provisions of its different sections, could be accomplished without reference to the provisions of the *ninth* section. There are no *conditions* to the right to file a petition and have a judgment under the provisions of that act, except that the claimant is a citizen of the United States, and has sustained loss by depredations committed by Indians "*in amity with the United States.*"

The right of Halsell to institute his suit and to recover a judgment, did not, under the statute, depend upon an annulment of his contract with the plaintiff in error; and yet according to the opinion of the learned judge whose judgment is under review here, and the argument of the counsel for the defendant, the *ninth* section of the act contains such *conditions* as take away the jurisdiction conferred by the *first* section, unless a claimant assents to those conditions. That condition, as we have shown, required Halsell to disavow his contract with the plaintiff, and to allow the Court of Claims, without having jurisdiction of the plaintiff, and without his assent, to fix the amount Halsell should pay to satisfy his contract obligations with Halsell.

It is extremely rare to find propositions so absurd, unjust and illogical, seriously urged in a judicial proceeding. It is also urged that the right of the citizen to institute his suit under the provisions of that statute is "*an act of grace.*" It is more accurate to assume that since by the Constitution the judicial power of the United States extends to controversies to which the United States is a party, and that inasmuch as Congress has vested a part of the judicial power over such controversies in the Court of Claims, that the legislation which vested that power in that court was in recognition of the duty imposed upon Congress to provide an appropriate judicial tribunal, which should be clothed with power to adjudge "controversies to which the United States may be party." It was in recognition of the existence of this obligation, and for the purpose of promoting the administration of justice in "controversies to which the United States is a party" that the Court of Claims, in 1863, was completely vested with a part of the judicial power of the United States. The extension of the jurisdiction of that court to new subjects or "controversies" was no more "an act of grace" than was the original organization of the court.

It is a familiar principle in the construction of a statute which confers a new jurisdiction upon an existing court, that unless the contrary is expressed or plainly implied, it is understood that the new jurisdiction was intended to be exercised according to the general inherent powers of the court. (Endlich on Statutes, Section 430.)

It might with equal propriety be argued that the Judiciary act, which established the courts of the United States and conferred upon them jurisdiction of "controversies between citizens of different States," was "an act of grace." The "judicial power of the United States," was wisely conferred by Congress on such "inferior courts" as the public needs and a proper administration of justice seemed to require; and when Congress considered it useful and expedient to vest that part of the judicial power which related to "controversies to which the United States shall be a party," upon an inferior court to be known as the Court of Claims, it was because Congress was moved by a high sense of duty to provide a judicial tribunal to which the citizen should have the right to resort for the purpose of securing for the citizen and the United States the benefit and advantage of a judicial determination of certain claims and demands of the citizen upon the United States, which created "controversies to which the United States was a party."

"An act of grace" assumes that something has been given or withheld which the citizen had no right to have. The right of petition cannot be denied to the citizen; and when Congress conferred the right to grant the prayer of the citizen in respect to their claims against the United States resulting from Indian depredations upon the Court of Claims, it was a recognition by Congress of the right of the citizen to have a judicial determination of the controversy which resulted from the existence of a claim or demand of the citizen against the United States.

The jurisdiction conferred by the act of March 3, 1891, *was no more a "bounty" than it was an "act of grace."*

A *bounty* is something *given* in consideration of an act done, or service rendered; or something agreed or promised to be given to secure the accomplishment of a specific object.

In the case of *Eichelberger* vs. *Lifford*, 27 Md., 420, the Court of Appeals declared that *bounty* implies *gratuity* and not compensation.

There is not a single element of *bounty* in an act of Congress which only provides for the adjudication and payment of a class of claims which in many ways and for series of years the United States had recognized its obligation to pay. A *bounty* which has been earned becomes a vested right and cannot be taken away by a repeal of the statute which granted it; while a remedial statute conferring a new remedy may be repealed and thereby terminate all power in the court to exercise the jurisdiction conferred in all cases where the case has not been terminated by the rendition of a final judgment.

The provisions of that act, so far as it conferred the jurisdiction granted in the *first* section was not a *gift* in any sense in which that word is used in the law.

If, however, the *fruits* of the judgment secured to Halsell by the services rendered by the plaintiff under said act, and his receipt of such fruits was a *gift* he would not by an acceptance of the *gift* have been relieved of his contract obligation to the plaintiff. This question is expressly decided in the case of *Davis* vs. *Commonwealth*, 41 N. E. Reptr., 292, recently decided by the Supreme Court of Massachusetts, and involved the right of Davis to recover the fee stipulated to be paid by the State for services rendered in securing a refund of the direct tax which had been paid by Massachusetts under the provisions of the direct tax-law of August 5th, 1861. The payment of the amount due on the contract was resisted upon two grounds:

1st. Because the contract was for the payment of a contingent fee out of the amount which might be secured to the State through the services rendered by Davis.

2d. Because the act of March 2, 1891, which authorized a refund of the direct tax, provided "that no part of the money hereby appropriated shall be paid out by the Governor of any State or Territory, or any other person, to any attorney or agent under any contract for services now existing or heretofore made between the representative of any State or Territory or any attorney or agent."

That court held, however, that the attorney having rendered the service required by the contract was entitled to be paid the compensation therein stipulated. The court on this question used the following language:

> "But the petitioner has in substance performed his part of the contract and the Commonwealth has fully received the benefit contemplated by such performance; and whether the contract was a provident one or not, the .Commonwealth ought in substance to perform its part of the contract, and we see no legal difficulty in its doing so."

The refund of the money paid by the States under the dirct tax law was both a gift and a gratuity, and without consideration; and yet the court in that case declared that Congress could not attach to the reception of the gift, such conditions as would render a contract made by the State with its attorney for services rendered in the prosecution of an asserted claim—which culminated in the gift made by the United States—void; and the court there decided that Massachusetts must pay its attorney according to the terms of the contract, although Congress had attempted in the act providing for the payment of the gift had prohibited such payment.

It is equally clear that those remedial provisions of the act of March 3, 1891, which conferred upon the Court of Claims jurisdiction to finally adjudicate the claims of those citizens who had previously sustained losses by Indian depredations, were in no sense of that term, a "donation" to those citizens who were by that act recognized as having the right to commence their suits in the Court of Claims. A "*donation*" according to the usual meaning and understanding of that term, suggests something given or bestowed gratuitously, and without consideration. There is revealed in that act, as expressed in its title, and in the provisions of its several sections, a purpose on the part of Congress to redeem the pledge of the Nation to provide "ultimate satisfaction" to its citizen for the losses specified in the *first* section, by making provision for their "adjudition and payment." This legislation was a recognition of the obligations of the United States to its citizens, and an expression of its purpose to provide for their satisfaction. That act, or any act, enacted for such a purpose, is no more "an act of grace," a bounty, a gift, or a donation than such action on the part of an individual citizen towards his creditors would be termed "an act of grace," a bounty, a gift, or a donation.

E The acceptance by the plaintiff in error of the sum of fifteen hundred dollars allowed by the Court of Claims in its judgment in the case of Halsell's Executrix vs. the United States, and its subsequent payment by the United States to the plaintiff, did not render the contract made by Halsell with the plaintiff, "not enforcible" in the courts of the United States.

The opinion and judgment of the court below were based upon the following assumptions:

1st. That it was within the power of Congress by the enactment of a remedial statute, to declare void the contract made between Halsell and the plaintiff on the 22d of May, 1874.

2d. That the contract between Halsell and the plaintiff, having been rendered void by the provisions of the second clause of the *ninth* section of the act conferring the jurisdiction of the court, there was conferred upon the Court of Claims power to make an allowance of a specific amount as a fee to the plaintiff "for prosecuting the claim;" and that the acceptance thereof by the plaintiff satisfied and discharged the contract obligations of Halsell to the plaintiff under the said contract; and the said contract by reason of such allowance and acceptance was rendered "*not enforcible*" by the plaintiff against the legal representative of Halsell in the courts of the United States.

It has already been demonstrated that the annulment of the contract existing between Halsell and the plaintiff on the 3d of March, 1891, was beyond the power of Congress. It is equally clear that the right of the plaintiff to enforce his contract against the estate of Halsell, and to recover the amount payable thereon upon its performance by the plaintiff, was not impaired, nor the contract rendered "not enforcible" either by the action of the Court of Claims in making an allowance to the plaintiff of the sum of fifteen hundred dollars for services rendered by him in prosecuting the claim of Halsell, nor by the subsequent payment of that sum by the United States, and its receipt by the plaintiff.

The action of the Court of Claims was based upon the theory that the provision of the *ninth* section which declared void the contract between the plaintiff and Halsell was a constitutional provision, and binding on the plaintiff as well as on Halsell; and that its effect was to destroy the contract, and relieve the legal representative of Halsell from any legal obligation to make payment to the plaintiff according to its terms.

There is no other theory upon which the action of the Court of Claims, in respect to the allowance made to the plaintiff for services rendered in the prosecution of the claim of Halsell can be sustained. It cannot be sustained upon that theory, for the reason, that the compensation which an attorney becomes entitled to receive for services rendered by him in prosecuting an Indian Depredation Claim, (within the limits of fifteen and twenty per cent., specified in the act,) would depend upon either *a quantum meruit*, or a contract, and in either case, would require the Court of Claims to determine *facts* which were exclusively within the province and jurisdiction of a jury. If the Court of Claims proceeds to ascertain the plaintiff's right to compensation for services rendered in the prosecution of the claim and suit of Halsell against the United States upon *a quantum meruit* it should have heard evidence of the extent and value of the services rendered; and the determination of these facts in this case were beyond the jurisdiction of the Court of Claims; for the reason that a claim, or cause of action, arising *ex contretu*, as in the case under consideration, or upon *quantum meruit*, where there is no contract, constitute controversies which are exclusively cognizable in the courts of common law.

The value of the services rendered to Halsell and the amount to be paid therefor under the contract, were to be determined exclusively by the terms of the contract. If the contract had been performed by the plaintiff then there was payable a fixed sum, which was measured by one-half of the amount recovered. If nothing had been secured to Halsell or to his estate as a result of the professional services rendered by the plaintiff, it is obvious that neither the Court of Claims, nor any other judicial tribunal, would have allowed him any compensation whatever. It necessarily follows, therefore, that when the plaintiff, by reason of the professional services rendered by him, had secured the payment to the estate of Halsell the sum of $17,720.00 on account of the claims specified in his contract, he became entitled to be paid under the contract the sum of $8,860.00. It is equally clear that when the Court of Claims entered upon an inquiry as to whether the plaintiff should be paid that sum, or be paid upon a *quantum meruit*, or according to the terms of the contract, it was invading the jurisdiction of those courts to which belong the exclusive jurisdiction of controversies between individual citizens.

The Court of Claims, under the act of March 3, 1891, has no jurisdiction of controversies between individual citizens, whether such controversies relate to the amount of fees payable to a lawyer for services rendered in collecting an Indian depredation claim or otherwise; and it is quite certain that any act of Congress which should attempt to confer such a jurisdiction, *and failed to provide for a trial by jury, where the amount in controversy exceeded twenty dollars would be in violation of Article VII of the Amendments to the Constitution and void.*

It is evident, however, that the Court of Claims, has not assumed any such power; for in the case of *Redfield* vs. *The United States*, 27 Court of Claims, 473, it was declared that the provisions of the *ninth* section of the Indian depredation act of March 3, 1891, "*relating to costs is like the taxable costs in actions at common law which the parties cannot regulate by contract.*"

If that construction of the provisions of that part of the *ninth* section of that act, which relates to the amount allowed the claimant's attorney by the court for prosecuting a claim is correct, it necessarily results that the act of that court in allowing the plaintiff the sum of fifteen hundred dollars for the services rendered by him in prosecuting the claim of Halsell, was not in lieu of, nor a substitute for the contract provisions for compensation which, at that time, existed between the plaintiff and Halsell. The difference between the provisions of the *ninth* section of the Indian depredations act, and sections 823 and 824 of the Revised Statutes is, that under the *first* of these statutes, the amount allowed to claimant's attorney under the name of costs is deducted from the judgment rendered in favor of the claimant, while under the two sections to which the Court of Claims refers, the judgment rendered *against* the losing party is increased by just the amount taxed as costs in favor of the party who has secured the judgment. In neither case, however, is the compensation payable to the attorney of the successful litigant, whether such compensation is payable under a contract, or upon *a quantum meruit*, in any respect affected by the action of those courts who are charged with the duty of giving effect to those statutes which relate exclusively to the costs taxed against a losing party in the courts of the United States.

THE FACT OF THE RECEIPT BY THE PLAINTIFF, OF THE SUM OF FIFTEEN HUNDRED DOLLARS ALLOWED BY THE COURT OF CLAIMS, AND PAID BY THE UNITED STATES, DID NOT SATISFY OR DISCHARGE THE OBLIGATIONS OF THE DEFENDANT IN ERROR TO THE PLAINTIFF UNDER THE CONTRACT OF MAY 22, 1874.

When the allowance of the sum of fifteen hundred dollars was made to the plaintiff by the Court of Claims the plaintiff had practically performed his contract with Halsell; for there was no further professional service required or to be performed; for it is not reasonable to suggest that Congress would not promptly provide for the payment of all judgments which should be rendered on account of Indian depredation claims When the judgment rendered by the Court of Claims in favor of the defendant was paid by the United States, the amount payable to the plaintiff under the contract was an ascertained and fixed amount. That amount was determined by the terms of the contract, and the rendition by the plaintiff of such services as secured the payment to the defendant of the sum of $17,720. When that result was secured, and the amount paid to the defendant, there became due and payable to the plaintiff from the defendant the sum of $8,860.00. *That indebtedness was not satisfied and discharged by the payment to the plaintiff of the sum of fiteen hundred dollars.* It was an indebtedness payable by one citizen to another. It was an indebtedness which resulted from the existence of a lawful contract which had been performed by that citizen in whose favor that indebtedness existed. Neither that contract, nor that indebtedness was satisfied by the fact that the United States retained from the judgment rendered in favor of the defendant by the Court of Claims, the sum of fifteen hundred dollars, and paid it to the plaintiff.

The only fact appearing in the record from which it may be informed that the plaintiff gave any assent to these transactions, is, that he received the money transmitted to him by the United States. That fact cannot affect or conclude the right of the plaintiff in this proceeding to recover the balance due upon the contract after the payment of said sum of fifteen hundred dollars.

The principles which justify the statement of these propositions are elementary and familiar; and, as applied between individuals, the rule is firmly established that *a partial payment* of an ascertained and liquidated demand payable under a contract, does not extinguish or satisfy the original debt unless the *partial payment* be made upon some new consideration which induced the acceptance of such partial payment.

This court in the case of *Bostwick's Adm'x* vs. *United States*, 94 U. S. (4 Otto), 53, states the rule in the following langnage:

> "Payment by a debtor of a part of his debt is not a satisfaction of the whole, except it be made *and accepted* upon some new consideration."

The principles of the above case are made the basis of the judgment and opinion of the Court of Claims in *Baldwin* vs. *the United States*, 15 Court of Claims, 292–303, where that court stated the rule as follows:

> "There is no principle of the common law better established and more generally recognized than that a payment which is only in accordance with the terms of the contract and after its maturity, of part of a liquidated and ascertained debt, is no satisfaction in law of the whole indebtedness, and that a receipt in full given upon such part payment is *nundum pactum*, as to the unpaid balance and not binding upon the maker."

Speaking of the *exceptions* to this rule, that court said :

> "There are some apparent though not real exceptions. To make the receipt of a part a discharge of the whole, there must be a new consideration, or a voluntary and well-understood compromise of a disputable and *disputed claim* by which *each party* yields something for the concessions of the other ; or an accord and satisfaction by which a new contract is substituted. All the decisions upholding part-payment as a discharge of the whole debt, have turned upon one or the other of these apparent exceptions. The consideration may be slight, but it must be found to exist, as the payment of a note before maturity, or by the promise of another party, or in chattels not required by the contract, or in any other manner differing from the original contract *which mag seem to be more beneficial to the payee.*"

It is sufficient for the purposes of this argument, to suggest that in the record of the case here under review there is not a single fact found and certified in the special verdict of the trial court, which would justify the contention, that the plaintiff by any act on his part is brought within any of the exceptions to the rule above stated. And since this conclusion necessarily follows from the facts proved and certified to this court, there can be no defense against the right of the plaintiff to recover on his contract, which is based upon the payment to and acceptance by the plaintiff of the sum of fifteen hundred dollars received by him from the United States, and paid out of the judgment rendered in favor of the defendant. It might with equal force and propriety be urged, that if the defendant had sent to the plaintiff the sum of fifteen hundred dollars on acconnt of, or in payment of said indebtedness, through any other agency, and it had been accepted by the plaintiff, the contract of May 22, 1874, by reason of that fact would have become "*not enforcible.*

CONCLUSION.

The plaintiff in error therefore submits, that the result of the discussion of the questions here submitted for determination justifies the statement of the following propositions:

1st. That it is not within any of the powers delegated to Congres by the Constitution to enact laws which shall declare *void* the contracts made, and existing between individual citizens previous to and at the time of the enactment of any statute which shall declare such contracts void.

2d. That the *second* clause of the *ninth* section of the act "to provide for the adjudication and payment of clains arising from Indian depredations," approved March 3, 1891, is unconstitutional and void if it is construed to impair the right of the plaintiff to have and use his contract with J. G. Halsell as evidence of his right to perform the service and receive the compensation provided in his contract made with said Halsell on the 22d of May, 1874.

3d. That if the effect of the said *ninth* section of said act is to render said contract "nugatory," and to confer upon the Court of Claims exclusive jurisdiction of the question of fees earned and payable to attorneys for services rendered in the prosecution of the claims for which provision was made in said act, under contracts made previous to the date of said act, then those provisions of said section, which conferred upon said court that jurisdiction are void, because its effect would be to confer upon that court jurisdiction of controversies between individual citizens, without making any provision for trial by jury.

4th. That an allowance to the plaintiff by the Court of Claims of the sum of fifteen hundred dollars, under the provisions of the *ninth* section of said act, and the subsequent payment of said sum to the plaintiff in error by the United States, out of the money payable to the defendant in error, in satisfaction of the judgment secured for her by the plaintiff in error, was not a satisfaction of the obligations of the defendant in error, under the contract made by J. G. Halsell with the plaintiff in error on the 22d of May, 1874; nor did such allowance and payment "supersede" the provisions of said contract and cause the same to become *void* and "*not enforcible*" against the defendant in error in the courts of the United States.

These propositions being established, it necessarily follows that the judgment of the court from which this writ of error is prosecuted, should be reversed, and the case remanded to that court with instructions to render such judgment as will recognize and give effect to the contract made between the plaintiff in error and J. G. Halsell, notwithstanding the provisions of the *ninth* section of the Indian depredation act of March 3, 1891.

JOHN J. WEED,
Attorney for Plaintiff in Error.

161 US 72

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In the United States Supreme Court.

161–72

THOMAS BALL, Plaintiff in Error.

—vs.—

4 7 1

JULIA F. HALSELL, Defendant in Error.

Brief of the Defendant in Error.

Henry C. Coke
~~LEAKE, HENRY & REEVES,~~

Attorney~~s~~ for Defendant in Error.

In the United States Supreme Court.

THOMAS BALL, Plaintiff in Error.

—vs.—

JULIA F. HALSELL, Defendant in Error.

W W LEAKE

Brief of the Defendant in Error.

The plaintiff in error sued upon the following contract, to wit:

State of Texas, }
County of Jack. }

We, the undersigned parties, do hereby constitute and appoint Thomas Ball our lawful attorney to receive and to make, sign and give all necessary acquittances and receipts for one-half of all money which may be received by him as our attorney-at-law, for prosecuting claims against the United States Government, on account of the depredations of the Comanche and Kiowa Indians, on our property of horses, mules and cattle, in the state of Texas. Said one-half being the amount agreed by us to pay him of all that he may recover of said government for said depredations.

Given under our hands this the 22nd day of May, A. D., 1874. (Signed) J. G. Halsell. (p. 2.)

J. G. Halsell died, and the defendant in error, Julia F. Halsell, is his surviving wife and executrix. (p. 1.)

Plaintiff's petition charged that in pursuance of said contract plaintiff in error prosecuted the claims of said J. G. Halsell before the acting commissioners of Indian affairs, at Washington, and before congressional committees, and the court of claims, for the aggregate sum of $24,860.-00, and that he finally, on the 16th day of June, 1892, recovered before the court of claims a judgment in favor of the said Julia F. Halsell, as executrix, for the sum of $17,-720 00, out of which the sum of $1500.00 was allowed by the judgment of the court of claims to the plaintiff in error, as his fee. (p. 13.)

The remainder of the judgement was paid to the said Julia F. Halsell.

This suit was brought to recover one-half of the judgment of $17, 720.00, less the said sum of $1500.00, already received as aforesaid. (p. 1.)

The defendant, among other things, answered that if any such contract as that pleaded by plaintiff was ever in fact made, it was declared void by the 9th section of the Act of Congress, of the United States, of the 3rd of March, 1891, entitled "An Act to Provide for the Adjudication and Payment of Claims Arising from Indian Depredations," and that an allowance for all that was permitted by said Act to be paid plaintiff in error for services rendered by him under said contract was made him in said judgment, and was afterwards collected by him from the Treasurer of the United States. (p. 4.)

The cause was tried without a jury, before the Hon. John B. Rector, United States District Judge, who rendered judgment that the plaintiff take nothing by his suit, and pay the costs of Court. (p. 11.)

The Judge filed his findings of fact, which in substance supported the foregoing allegations of plaintiff and defendant. The suit was filed in the Court of Claims subsequent to the said Act of 3d of March, 1891. (p. 13.)

Judge Rector filed the following conclusions of law, viz.

CONCLUSIONS OF LAW.

The Court being of the opinion that said contract is rendered nugatory, and the provisions therein made for compensation for said attorney, Thomas Ball, is superseded by the ninth section of the Act of March 3d, 1891, and being of opinion that said contract is not enforcable, and that said statute above referred to fixes and provides for the payment of all the compensation which attorneys prosecuting the claim under said Act are entitled to receive, judgment is rendered for defendant. JOHN B. RECTOR,

(p. 15.) U. S. District Judge.

ARGUMENT.

The jurisdiction of the Court of Claims existed only by virtue of the act above referred to.

The United States could not be compelled to either pay